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No. 483

In the

Supreme Court of the United States

OCTOBER TERM, 1969

ATLANTIC RICHFIELD COMPANY, et al,
Petitioners,

v.

W. O. HILTON, et al,
Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

Opinion Of United States Court of Appeals, 5th Circuit In W. O. Hilton, Et Al, Appellants v. The Atlantic Refining Co., Appellee, Reported In 327 F. 2d 217, Rendered Jan. 9, 1964, Rehearing Denied Feb. 19, 1964.

Hutcheson, Circuit Judge:

This is an appeal from a ruling denying plaintiffs-appellants' motion to remand to the state court. The motion was based on the theory that there are certain indispensable parties, citizens of Texas, who could and, therefore, must

be joined as parties defendant and whose joinder would destroy diversity and, therefore, the jurisdiction of the federal court.

Appellants, Texas residents, filed suit in a Texas district court, naming it a suit for removal of a cloud on their title to a certain eighty acres.

While denominated a suit to remove cloud, the claim of plaintiffs' suit was that the oil and gas lease from appellants to appellee was invalid for lack of a sufficient description.

Appellee, a resident of Pennsylvania, removed to the federal court, where appellants moved to remand and appellee counterclaimed in trespass to try title, asserting ownership of a valid lease on the eighty acres.

Evidence on appellants' motion to remand was heard and denied, the case was decided against plaintiffs on the merits, and plaintiffs have appealed, asserting error in the refusal to remand.

(1) An indispensable party is one whose relationship to the matter in controversy in a suit in equity is such that no effective decree can be entered without affecting his rights. Typical of such equitable suits are suits to cancel or rescind, and the principle has been many times stated and applied.[1]

Of the opinion that a judgment for the plaintiffs would, because of the particular fact that the land was surrounded by producing leases and the judgment for plaintiffs would

[1] Mallow v. Hinde, 12 Wheat. 193, 6 L. Ed. 599; Shields v. Barrow, 17 How. 129, 15 L. Ed. 158; Sneed v. Phillips Pet. Co., 5 Cir., 76 F. 2d 785; Calcote v. Texas Pac. Coal & Oil Co., 5 Cir., 157 F. 2d 216, 167 A.L.R. 413; Hudson v. Newell, 5 Cir., 172 F. 2d 848; Hudson v. Newell, 5 Cir., 174 F. 2d 546.

not, therefore, practically injuriously affect the interest of the royalty owners, and concluding also that he should and would determine the case against plaintiffs' claim that the description was insufficient, the district judge denied the motion to remand. He then heard the claim and counter claim denying relief to appellants and granted judgment for the appellee.

Here appellee urges that the district judge did not err in holding that the non-participating royalty holders were not indispensable parties and, therefore, in refusing to remand.

(2) We cannot agree with this view. If, as a result of a decision in plaintiffs' favor, the lease would terminate, the non-participating holders would be denied their present rights to royalties under their lease. Such an effect constitutes them indispensable. Calcote v. Texas Pac. Coal & Oil Co., 5 Cir., 157 F. 2d 216, 167 A.L.R. 413. This is so because, if the lease were removed from the unit for want of sufficient description, the lease would terminate for lack of production, since it is presently held enforced by production within the unit, but off the lease. If appellants won the suit and re-entered, the lease would terminate since it would no longer be validly unitized.

(3, 4) Appellee urges that non-participating royalty holders are not indispensable parties to a trespass to try title suit. Ordinarily they are not, but if a judgment effectively precludes them from enforcing their rights and they are injuriously affected by the judgment, they are indispensable. Royal Petroleum Corp. v. Dennis, 160 Tex. 392, 332 S.W. 2d

313. Here a judgment for appellants in the suit, resulting in a termination of the lease, would have effectively prevented any future recovery by the non-participating royalty owners under that lease, and the district judge could not, by determining in advance that he would decide the case adversely to plaintiffs' claim, make indispensable, parties who would otherwise be indispensable. Hudson v. Newell, 5 Cir., 172 F. 2d at p. 852; Young v. Powell, 5 Cir., 179 F. 2d 147, at 151.

Since joinder of these indispensable parties would result in a jurisdictional defect, which is cause for remand under 28 U.S.C. §1447(c), the judgment must be reversed with directions to remand the cause to the state court.

Reversed with directions to remand.

APPENDIX B

Opinion Of Court Of Civil Appeals Of Texas, 12th Supreme Judicial District In Atlantic Richfield Co., Et Al, Appellants v. W. O. Hilton, Et Al, Appellees, Reported In 437 S.W. (2) 347, Rendered Jan. 30, 1969, Rehearing Denied Feb. 20, 1969.

Dunagan, Chief Justice.

This suit involves the question of whether an oil, gas and mineral lease executed by appellees, the Hiltons and McCoys, owners of the leasing privilege, to the predecessor in title of appellant, Atlantic, had terminated.

Appellees, W. O. Hilton and wife, Malvirin Hilton and L. A. McCoy and wife, Ila Mae McCoy, filed suit in November, 1961, against Atlantic Refining Company, now Atlantic Richfield Company, in the District Court of Henderson County, Texas, to remove as a cloud on title to an 82.713 acre tract, a part of a Unit Declaration for 160 acre oil unit filed by appellant, Atlantic, under an oil and gas lease executed by appellees, the Hiltons and McCoys, and which lease appellees claimed to be invalid because of a lack of sufficient description of land. Atlantic filed a counter claim against appellees, the Hiltons and McCoys, in the nature of a trespass to try title action. The case was removed from State Court to the U. S. District Court in Tyler on Atlantic's verified petition and bond. The appellees herein filed a motion in Federal Court to remand the cause to the District Court of Henderson County for the purpose of bringing in certain royalty owners who are alleged to be necessary and/or indispensable parties. The Federal District Court

overruled the motion to remand. The Court then proceeded to hear the case on its merits without the aid of a jury. Upon considering the pleadings, pre-trial stipulations and pre-trial order, and the evidence, the Court proceeded to render judgment against appellees on their cause of action and rendered judgment for Atlantic on its counter claim. The United States Court of Appeals for the Fifth Circuit reversed the trial court's order overruling the motion to remand and ordered the case remanded to the State Court for the joinder of indispensable parties, and thereby effected a reversal of the judgment on the merits in favor of Atlantic. Hilton v. Atlantic Refining Company, 327 F. 2d 217. On April 20th, 1967, after the cause had been remanded to the Henderson County District Court, the appellees herein (plaintiffs in the court below) joined by Willis D. Moore, as a plaintiff, amended their pleadings suing for title and possession of said tract alleging for the first time the lease executed by appellees, the Hiltons and McCoys, did cover the 82.713 acre tract, but asserting that appellant, Atlantic, exceeded the pooling powers in said lease, and there being no producing well on said tract when the primary term expired, that said lease terminated. Appellees filed motion for summary judgment based on the holding in Jones v. Killingsworth, 403 S.W. 2d 325 (Tex. Sup. 1965). Appellants also filed motion for summary judgment. The trial court granted appellees' motion for summary judgment and denied appellants' motion for summary judgment, resulting in this appeal.

On August 5, 1951, appellees, the Hiltons and McCoys, executed a 7/8ths oil and gas lease for a primary term of ten years referred to as the Hilton-Atlantic Lease covering a called 80-acre tract in the Alfred Benge Survey, Henderson County, Texas, re-surveyed to be 82.713 acres which was assigned to appellant Atlantic. Delay rentals were paid to cover the privilege of deferring commencement of drilling operations to the end of the primary term on August 5, 1961. The Hilton Lease provided for pooling for oil in units not substantially to exceed 40 acres in area with the provision "that should governmental authority having jurisdiction prescribe or permit the creation of larger units than those specified, units thereafter created may conform substantially in size with those prescribed by governmental regulations."

Adjoining said Hilton and McCoy Tract on the West is the J. W. Melton Tract. Also, on August 5, 1951, appellants, J. W. Melton and wife, Virgie Melton, executed an oil and gas lease covering their tract, re-surveyed to be 83.815 acres, for a primary term of ten years, which was also assigned to appellant Atlantic. Delay rentals were also paid to the end of the primary term under this lease and same contained similar pooling provisions as in the Hilton et al Lease assigned to Atlantic.

The Railroad Commission on March 14, 1961, effective February 13, 1961, promulgated an order, which included the following:

> "No proration unit shall consist of more than 80 acres except as hereinafter provided * * *

> "Provided, however, that operators may elect to assign tolerance of not more than eighty (80) acres of additional unassigned lease acreage to a well on an eighty (80) acre unit and shall in such event receive allowable credit for not more than one hundred sixty (160) acres."

On June 12, 1961, the Railroad Commission amended its first order and ordered for the Fairway (James Lime) Field effective July 1, 1961, proration units of 80 acres plus 80 acres tolerance for each well and for filing of proration plats showing acreage assigned each well by July 1, 1961.

On June 30, 1961, Atlantic executed and filed for record a Declaration of Unit reciting itself to be the owner of said J. W. Melton and wife Lease and W. O. Hilton et al Lease, and reciting said leases granted the right and power to pool the lands covered by same with other land, leases or mineral interests "to form units of the size permitted or prescribed by the Railroad Commission of Texas"; and further reciting that by the order of the Railroad Commission "adopted rules providing for 160 acre spacing for oil", and that for the purpose of promoting conservation and complying with said spacing rules, Atlantic desired to declare a unit for the production of oil from the James Lime Formation, and in the exercise of its right and power declared said leases pooled so as to form a unit consisting of the North 80 acres of said W. O. Hilton et al Lease and the North 80 acres of the J. W. Melton and wife Lease.

Appellant, Atlantic, in either March or April, 1961, in preparing for making a drilling location on the Hilton Tract and as a result of a title requirement, sought from appellees,

the Hiltons and McCoys as lessors, the execution of a lease description amendment to correct an erroneous call in the lease description of the land calling for the beginning corner to be at the Northeast corner of the Hilton Tract and to go East, instead of for the beginning corner to be at the Northwest corner of the Hilton Tract. Appellees, the Hiltons and McCoys, were requested a number of times to execute the lease description amendment and to all these requests refused to do so. Atlantic then moved its drilling location to the adjoining Melton Tract and commenced drilling the well on April 30, 1961, completing same on June 8, 1961, in the James Lime Formation, with actual production of oil commencing on June 25, 1961, which has continued to date. No well has been drilled in the search of oil or gas on the Hilton and McCoy Tract and consequently no production of oil, gas or other minerals has been obtained therefrom.

The Hiltons and McCoys were presented division orders which they declined to execute.

Appellees, the Hiltons and McCoys, then on June 1, 1961, executed two top leases covering the 82.713 acre tract in favor of Willis D. Moore, which were for primary terms of ten (10) years. These leases were filed for record on December 28, 1966.

While this case was pending in the Federal Court, a pretrial order, including written stipulations of the parties, was entered and filed with the papers as part of the record made in open court in the case.

The stipulations in said pre-trial order contained appellees' stipulation that the issues involved in the suit related to the sufficiency of the land description in the W. O. Hilton et al Lease.

Upon remand to the State Court the appellees remained the same, appellant was the same, and appellees' lawsuit was the same until the second amended petition was filed by appellees on April 20, 1967, when the other party defendants (appellants) were brought in.

Appellants contend that said stipulations are binding contracts on the parties and are still in full force and effect and that the appellees should not be permitted to assert Atlantic exceeded its authority to pool or that said tracts were not pooled and further that appellees are not entitled to recover in this court on an assertion directly opposite that upon which they recovered judgment in the Federal Court.

Appellants' contentions under their first three points of error involve the effect of appellees' stipulations contained in the pre-trial order entered in this case at a prior time, by the Federal District Court.

Appellees stipulated in Federal Court that the basis of their recovery was the insufficiency of the description of the land. Thus, the question before the Federal Court was: Was the lease invalid for lack of a proper description? No contested fact issues were involved. Therefore, the issue before the Federal Court involved only a question of law.

(1) It seems to be a well established rule of law that stipulations of counsel with respect to the construction and legal effect of unambiguous contracts are not binding on either the court or the parties. Swift & Company v. Hocking Valley Railway Company, 243 U. S. 281, 37 S. Ct. 287, 61 L. Ed. 722 (1917); New Amsterdam Casualty Company v. Waller (C.A. 4th) 323 F. 2d 20, cert. den., 376 U.S. 963, 84 S. Ct. 1124, 11 L. Ed. 2d 981 (1963); Smith, Kirkpatrick & Co. v. Continental Autos, Ltd. (U.S.D.C.) 184 F. Supp. 764 (1960); American Chemical Paint Co. v. Dow Chemical Co. (C.A. 6th) 164 F. 2d 208 (1947); Reynolds v. McMan Oil & Gas Co., 11 S.W. 2d 778 (Tex. Com. App., 1928); Travelers' Indemnity Co. v. DeWitt, 207 S.W. 2d 641 (Tex. Civ. App., 1948, Galveston, n.w.h.); Bishop v. Sanford, 35 S.W. 2d 800 (Tex. Civ. App., Amarillo, 1931, writ dism.); 53 T.J. 2d, page 315, Sec. 3; see also 92 A.L.R. 663, 671.

(2) There was no claim that the lease was ambiguous. Under the above cited authorities, since the stipulated issues before the Federal Court involved only a question of law, appellees were not barred or foreclosed from thereafter amending their pleadings and proving that, as a matter of law, the Atlantic-Hilton Lease had terminated because of improper exercise of the pooling privilege under the doctrine of Jones v. Killingsworth, supra. These points are overruled.

The appellants next contend that "Appellees during the primary term of the Hilton-Atlantic lease wrongfully repudi-

ated Atlantic's title under said lease and thereby suspended the running of the primary term pending the determination of the controversy." This contention is also overruled.

It is appellants' position that one or more of three occurrences constituted a "repudiation" of the lease in question: (1) Hilton's and McCoy's refusal to execute a lease amendment; (2) the execution by Hilton and McCoy of two top leases to Mr. Moore; or (3) the statement made by Mr. Moore in a telephone conversation with Atlantic's Mr. Biard in the first week of July, 1961.

It is undisputed that Atlantic's employee, Paul Loman, was the only Atlantic representative who had direct contact with the lessors about the lease amendment. Mr. Loman, in his affidavit, offered by Atlantic in support of its motion for summary judgment, states:

> "* * * I think it was about March 1, 1961, that I first went to see Mr. Hilton about executing a lease description amendment for the purpose of correction the description of the land in the above lease. I know that I went back several times to see Mr. Hilton, and that, as I remember some time in May, 1961, Mr. L. A. McCoy who was then living in Louisiana made a trip back to East Texas, and that I also went to see him about executing the lease description amendment and also talked to him by long distance telephone. I know that Mr. Hilton and Mr. McCoy both refused to execute the lease description amendment, and that they both stated on one or more of the times mentioned above that Atlantic's lease was either good or it was not any good, and that if it was good then Atlantic did not need anything signed, and that they would not sign it. I also remember that on one of the occasions above, that one of the

wives stated that if the lease was not any good then they, the Hiltons and McCoys, owned the lease instead of Atlantic. To the best of my remembrance this last occasion was in the last part of May, 1961 * * *."

Mr. Hilton in his deposition offered by appellees testified as follows in response to questions propounded by Mr. McClendon:

"Q. Alright. Well, what did you tell him about whatever the paper was that he wanted you to sign?

"A. Well, I tried to get him to let me have it and take it to my attorney.

"Q. And what did he say?

"A. He wouldn't do it.

"Q. Alright.

"A. He put it back in his briefcase and tore out, back to town."

Mr. McCoy in his deposition which was also offered by appellees testified as follows in response to questions propounded by Mr. McClendon:

"Q. Well, what caused you to come to the conclusion that it was an invalid lease?

"A. When Atlantic's representatives went to trying to get in touch with me, to get me to sign some papers.

"Q. Did he talk to you about it?

"A. Yes, sir. He did.

* * * * *

"Q. Alright. Well, if you will, just state what was said in the conversation.

"A. Well, he came to me with these * * * he first brought 'em to Mr. Hilton and then he came over there.

I was up from New Orleans on a visit and he met me over there at Mr. Hilton's place and tried to get me to sign those papers. And I told him no that we had already signed some papers for the lease on the land. * * *

* * * * *

"Q. And did you tell him that you wouldn't sign them because the lease wasn't any good because it didn't describe the land?

"A. No. That wasn't the reason why I wouldn't sign 'em. I just didn't think it was necessary to sign another paper on that.

* * * * *

"Q. Alright. What was said then?

"A. Well, he said he would send me the papers to be signed again and he tried to get me to sign 'em again and I told him I wouldn't sign 'em. He asked me if I wanted him to fly down there and I told him no, that wouldn't be necessary.

"Q. Alright, Well, did he ever come back again or talk to you any more, after that?

"A. Not that I know of. No, sir."

The affidavit of Atlantic's employee, Jack Biard, of September 20, 1967, shows that the only contact he had with any of appellees was through his telephone call to Mr. Moore, attorney for the Hiltons and McCoys, in the first week of July, 1961.

Biard stated in his affidavit that in a telephone conversation with Willis Moore, attorney for the Hiltons and McCoys, in the first week of July, 1961, Mr. Moore advised him that the Hiltons and McCoys would not execute the lease description amendment because they (Hiltons and

McCoys) had decided that Atlantic did not own an oil and gas lease covering the Hilton, et al 80 acre, more or less, Tract in the Alfred Benge Survey because of the claimed defect in the description of the land.

A. A. Allen, by affidavit, also an employee of Atlantic, stated that a letter dated September 25, 1961, from Willis Moore was received by him on or about September 26, 1961, the pertinent parts of which read:

> "As I told Mr. Biard of your Tyler office during the first part of July, 1961, Mr. and Mrs. Hilton are of the opinion that your company does not hold any oil and gas lease covering the 80 acres that they own on the Alfred Benge League in Henderson County, Texas.
>
> "You are therefore requested to amend your Declaration of Unit recorded in Vol. 498, page 389 of the Deed Records of Henderson County, Texas, so as to delete the 80 acres of land belonging to them which 80 acres of land is included within the field notes contained in such Declaration of Unit.
>
> "Your immediate attention to this matter will be appreciated as Mr. and Mrs. Hilton and Mr. and Mrs. McCoy have recently had several opportunities to lease their land and feel that they are being damaged substantially so long as their title is clouded by your Declaration of Unit." (Emphasis ours).

(3) It is clear under the controlling authorities hereinafter cited that, as a matter of law, under the facts here presented the refusal of the Hilton and McCoys to execute the lease amendment was not a "repudiation" of the lease. The lessors' position was simply that Atlantic either had a valid lease or it did not.

(4) Under either version of the conversation between Moore and Biard, as related by them, it is clear that Moore did not tell Biard that Atlantic did not have a lease. Moore was only informing Biard that the Hiltons and McCoys were "of the opinion" or "had decided" that Atlantic did not have a lease. The statement by Moore to Biard was not a statement of Moore's legal opinion on the subject and did not constitute a "repudiation" of the lease by Moore. It is equally clear that Moore's statement did not constitute a repudiation of the lease by the Hilton and McCoys.

Moreover, Atlantic failed to establish that as a result of any of the grounds alleged to constitute repudiation of the lease, it suspended operations under the Hilton-Atlantic Lease or that it acted thereon to its prejudice. As a matter of fact, this record reveals that Atlantic, prior to and at the time of the expiration of the primary term of the lease on August 5, 1961, was of the opinion that it was continuing operations on the lease by virtue of combining the 80 acres of the Hilton and McCoy Lease with the 80 acres of the Melton Lease upon which tract the producing well was located establishing the 160 acre Atlantic-Melton Unit.

(5) The Supreme Court in the case of Kothmann v. Boley, 158 Tex. 56, 308 S.W. 2d 1 (1957) states the rule as follows:

> "Lessors who thus wrongfully repudiate the lessees' title by unqualified notice that the leases are forfeited or have terminated cannot complain if the latter suspends operations under the contract pending a determination of the controversy and will not be allowed to profit by their own wrong. * * *" (Emphasis ours).

See Sunray DX Oil Company v. Texaco, Inc., 417 S.W. 2d 424 (Tex. Civ. App., El Paso, 1967, writ ref., n.r.e.).

(6) In Adams v. Cannan, 253 S.W. 2d 948 (Tex. Civ. App., San Antonio, 1952, writ ref.) which involved an alleged repudiation of an oil and gas lease, the court stated:

> "The rule relied upon by appellees is one of equitable estoppel, and the generally accepted statement thereof is that made by the late Chief Justice Smith of this Court in Morgan v. Houston Oil Co., Tex. Civ. App., 84 S.W. 2d 312, 314, viz.:
>
> > " 'It is well settled that when a lessor determines to forfeit or cancel an oil and gas lease, and puts the lessee on notice thereof, he cannot complain if the latter suspends operations under the contract, pending the determination of the asserted right of the lessor to forfeit or cancel.' " (Emphasis ours).

This rule has lately been restated by the Supreme Court in Concord Oil Co. v. Alco Oil and Gas Corp., 387 S.W. 2d 635 (1965).

In the case of Steeple Oil & Gas Corp. v. Amend, 337 S.W. 2d 809 (Tex.Civ.App., Amarillo, 1960, writ ref., n.r.e.) the court was dealing with a similar situation wherein the lessor by letter had requested the owner of the oil and gas lease to give him a release as to the oil rights under his property because the owners of the oil and gas lease had not made any effort to exercise their rights to develop the properties covered by said lease. In disposing of this question, the court said:

> "We do not believe the tender of such letters are such as to 'wrongfully repudiate the lessee's title by unqualified notice that the leases are forfeited or have

terminated' within the holdings of our Supreme Court in Kothmann v. Boley, 158 Tex. 56, 308 S.W. 2d 1. To the contrary we believe the letters in the instant case are more comparable to those of similar import in Adams v. Cannan, Tex. Civ. App., 253 S.W. 2d 948, 951 (writ refused). In that case Justice Norvell said:

> "We do not regard the letter received by appellees on June 27, 1950, as presenting a clear, unequivocal challenge to lessee's title which is an essential basis of the doctrine relied upon. Although a release of the oil and gas lease was requested and there was some evidence that Adams had considered leasing the property to the Texas Company, should he be successful in securing the release, the letter itself does not purport to be a firm declaration of a position or contention that Adams held title to the premises involved to the exclusion of all rights of the appellees.' "

(7) Thus, it is well settled that a letter written by the lessor or his counsel addressed to the owner of the lease relative to apparent termination of the lease, and a lessor's request that a release of the lease be executed and returned as submitted, does not constitute such a clear and unequivocal challenge to the lessee's title as will excuse the suspension of operations by the owner of the lease. Adams v. Cannan, supra; 42 Tex. Jur. 2d 539, Sec. 239.

(8) "In order for an estoppel to exist, it devolves upon the party seeking the advantage thereof to establish that he has been misled to his injury." Concord Oil Co. v. Alco Oil and Gas Corp., 387 S.W. 2d 635 (Tex. Sup. 1965); Fitch v. Lomax, 16 S.W. 2d 530, 66 A.L.R. 758 (Tex. Com. App.) 1929. This the appellants have failed to

do. In its Third Amended Original Answer, Atlantic Richfield Company makes the following judicial admissions:

> "* * * * and believing that Plaintiff's claim, as to the lease being invalid for lack of sufficient description, to be without merit, this Defendant improved and operated the property and paid royalty to Plaintiff's grantees for a period of over five (5) years before Plaintiffs filed their Second Amended Petition * * *.
>
> * * * * *
>
> "* * * this Defendant now has, and has had and held peaceable, continuous, notorious and adverse possession of the oil, gas and other minerals in place under said land under the terms and provisions of said Lease and Declaration of Unit; and that this Defendant has been continuously producing oil and gas therefrom, * * *."

(9) These judicial admissions establish that the alleged "repudiation" was never relied on, and no operation was ever suspended during the primary term of the lease here in question by reason thereof.

We think it is apparent from a reading of the record in this case that neither Atlantic nor the appellees were aware there was any question about the legality of the Atlantic-Melton 160 acre unit until the Supreme Court delivered its decision in the case of Jones v. Killingsworth, 403 S.W. 2d 325 (1965). It is also apparent that up to that time, Atlantic was not aware that in attempting to establish the Atlantic-Melton Unit, it had exceeded the pooling powers granted by the provisions of said lease.

(10) It seems that when the lessor wrongfully repudiates an oil and gas lease, and puts the lessee on notice thereof,

the benefits that inure to the owner of the lease as a result thereof is the right or privilege to suspend operations under the lease contract pending a determination of the controversy. As shown by its pleadings above set out, Atlantic contends that it continued to operate upon the Hilton and McCoy property throughout the primary term of the lease.

Accordingly, we hold that the refusal of the Hiltons and McCoys to execute the amended lease tendered to them by Atlantic or the statement of Mr. Moore, the Hilton's and McCoy's attorney, did not present a clear, unequivocal challenge to lessee's title.

(11) In order to rely upon the top leases executed by the Hiltons and McCoys to their attorney, Mr. Moore, as a "repudiation" creating an estoppel, appellants had the affirmative burden of establishing that they had actual notice of such leases and that, in reliance thereon, operations were suspended under the Atlantic Lease. Petroleum Anchor Equipment, Inc. v. Tyra, 419 S.W. 2d 829 (S. Ct. 1967).

These top leases, which were executed on June 1, 1961, were not recorded until December, 1966, and appellants admit that they had no notice or knowledge of them prior to April 20, 1967, at a time long subsequent to the expiration date of the primary term of the Hilton and McCoy Lease assigned to Atlantic. There could not have been a suspension of operations during the primary term of the lease by reason of the top leases became appellants had no notice or knowledge of these leases during that period.

(12) Under all the authorities involving alleged repudiation, an unqualified notice of the act relied on to constitute repudiation is necessary. No such notice is shown in the record before us. As a matter of fact, appellant, 'Atlantic, in its reply brief admits that it was necessary under the rule announced in Kothmann v. Boley, supra, to prove notice to Atlantic of said repudiation. We are of the opinion that the execution of the top leases to Mr. Moore fails, as a matter of law, to constitute a "repudiation" of the Hilton-Atlantic Lease.

We have considered each of the appellants' contentions raised under their points of error and have concluded that they are without merit. They are each overruled.

Judgment of the trial court is affirmed.

APPENDIX C

Order Of The Supreme Court Of Texas In Which Application For Writ Of Error Was Refused On The Ground There Was No Reversable Error.

(Transcript of Proceedings in State Court of Civil Appeals)

IN THE SUPREME COURT OF TEXAS

No. B-1446 May 7, 1969

ATLANTIC RICHFIELD COMPANY et al.

v.

W. O. HILTON et al.

From Henderson County, Twelfth District

Application of petitioners for writ of error to the Court of Civil Appeals for the Twelfth Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicants, Atlantic Richfield Company et al., and surety, United States Fire Insurance Company, pay all costs incurred on this application.

No. B-1446 June 11, 1969

ATLANTIC RICHFIELD COMPANY et al.

v.

H. O. HILTON et al.

From Henderson County, Twelfth District.

Petitioners' motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

I, GARSON R. JACKSON, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and the seal of the Supreme Court of Texas, at the City of Austin, this the 11th day of June, 1969.

GARSON R. JACKSON, Clerk

By /s/ JEWELL SEELIGER, Deputy

Mrs. Jewell Seeliger

Filed in Court of Civil Appeals
12th Supreme Judicial District
Tyler, Texas on June 17, 1969

/s/ THOMAS E. WALL, Clerk

APPENDIX D

Order Granting Motion To Stay Mandate And Judgment Pending Petition For Writ Of Certiorari To The Supreme Court Of The United States.

(Transcript of Proceedings in State Court of Civil Appeals)

No. 402

In The Court of Civil Appeals
For The Twelfth Supreme Judicial District
Of Texas At Tyler

ATLANTIC RICHFIELD COMPANY, Et Al,
Appellants,

v.

W. O. HILTON, Et Al,
Appellees.

June 26, 1969

THIS DAY came on to be heard Appellants' Motion to Stay the Mandate and Judgment Pending Petition for Writ of Certiorari to the Supreme Court of the United States; and the same being inspected, it is the opinion of the Court that the motion should be, and the same is hereby, granted.

I, Thomas E. Wall, Clerk of the Court of Civil Appeals of the Twelfth Supreme Judicial District of the State of Texas, hereby certify that the foregoing is a true and correct copy of the Order of this Court entered in the above

cause on June 26, 1969, as same appears recorded in Minute Book 1, Page 363 of the Minutes of this Court.

Witness my hand and seal of said Court at Tyler, Texas, this the 29th day of July, 1969.

(SEAL) /s/ THOMAS E. WALL

Clerk of Said Court.

APPENDIX E

Plaintiffs W. O. Hilton Et Al Original Petition Filed In The District Court of Henderson County, Texas.

(U. S. 5th Circuit Court Record Volume 1, pps 7-9, and State District Court Transcript pps. 2-3)

(Number and title omited) . (Filed Nov. 22, 1961)

Now come W. O. HILTON and wife, MALVIRIN HILTON, and L. A. McCOY and wife, ILA MAE McCOY, hereinafter called Plaintiffs, complaining of THE ATLANTIC REFINING COMPANY, hereinafter called Defendant, and for cause of action respectfully show to the Court:

I

Plaintiffs W. O. Hilton and wife, Malvirin Hilton, reside in Henderson County, Texas. Plaintiffs L. A. McCoy and wife, Ila Mae McCoy reside in Anderson County, Texas. The Defendant, The Atlantic Refining Company, is a corporation (foreign) with offices at Dallas, Dallas County, Texas.

II

Plaintiffs say that they are, and were at the time of filing of this suit, owners of the title, and in possession of all that certain tract or parcel of land in Henderson County, Texas, described as follows, to-wit:

> All that certain tract or parcel of land situated on the ALFRED BENGE SURVEY, A-57, Henderson County, Texas, and being more particularly described as follows:
>
> BEGINNING at the Northeast corner of a 57.978 acre tract standing in the Name of Larkin Smith, et al;

THENCE North 81 deg. 06.1 min West 1216.21 feet with the North Line of said Smith tract and the North Line of the Clifford Emerson 40 acre tract to a point for corner;

THENCE North 08 deg. 33.2 min. West to a point for corner in the North Boundary Line of said ALFRED BENGE SURVEY A-662, said point being in the middle of a public road;

THENCE South 81 deg. 41.7 min. East along the North Boundary Line of said Benge Survey and the South Boundary Line of said Rachel Survey to a point for corner 2959.8 feet North 09 deg. 45.85 min. East of the place of beginning;

THENCE South 09 deg. 45.85 min. West 2959.8 feet to the place of BEGINNING, and containing 82.713 acres of land, more or less.

III

On or about June 30, 1961, the Defendant caused to be recorded a certain Declaration of Unit dated June 30, 1961, now recorded in Volume 498, page 389 of the Deed Records of Henderson County, Texas. Such instrument purports to include the above described property within a unit for production of oil from the James Lime Formation.

IV

Such instrument creates an adverse claim and cloud on Plaintiffs' title which should be removed, cancelled and held for naught.

WHEREFORE, Plaintiffs pray that Defendant be cited to appear and answer this petition, that on final hearing hereof Plaintiffs have judgment removing cloud from title as al-

leged, and that Plaintiffs have such other relief, legal and equitable, to which they may be entitled under the law and the facts, as well as all costs of suit.

MOORE & HOLLAND

By:

/s/ WILLIS D. MOORE

Attorneys for Plaintiffs

P. O. Box 392
Athens, Texas

APPENDIX F

Petition For Removal From State Court To U. S. District Court Filed By Atlantic In U. S. District Court.

(U. S. 5th Circuit Court Record Volume 1, pps. 2-7)

(Number and title omitted) (Filed Dec. 15, 1961)

TO THE HONORABLE JOE W. SHEEHY, JUDGE OF SAID COURT:

Comes now THE ATLANTIC REFINING COMPANY, a corporation, Defendant in the above cause, and files this, its Petition for Removal of said cause from the District Court of Henderson County, Texas, 3rd Judicial District, in which it is now pending, to the District Court of the United States for the Eastern District of Texas, Tyler Division, and as grounds therefor, would respectfully show:

I.

This cause was commenced in the District Court of Henderson County, Texas, for the 3rd Judicial District of Texas, where it bears Docket No. 61-199; citation was served on the Petitioner on the 27th day of November 1961, and twenty-days have not elapsed since service of sad citation.

II.

Said actioin is of a civil nature, which was brought by the Plaintiffs therein to remove a purported cloud alleged to have been cast upon Plaintiffs' title to a certain tract of land containing 82.713 acres, more or less, situated in the Alfred Benge Survey, A-57, Henderson County, Texas, which is described by metes and bounds in bounds in Plaintiffs' Petition, to which reference is here made, by virtue of the

terms and provisions of a certain Declaration of Unit dated June 30, 1961, executed by the Petitioner, The Atlantic Refining Company, recorded in Vol. 498, Page 389, Deed Records, Henderson County, Texas, which Declaration of Unit embraces that certain Oil & Gas Lease dated August 5, 1961, executed by the Plaintiffs in said suit, as Lessors, in favor of B. L. Garrett, as Lessee, recorded in Vol. 373, Page 255, Deed Records of Henderson County, Texas, covering the above mentioned land and premises, which Lease was held and owned by this Petitioner on the date of the execution and filing of the aforesaid Declaration of Unit, and the same is now held and owned by this Petitioner. That said Lease and said Declaration of Unit are now in full force and effect, and by this suit the Plaintiffs seek to rescind and cancel the same.

III.

This action involves a controversy which is wholly between citizens and residents of different states, in that the Plaintiffs, W. O. Hilton and wife, Malvirin Hilton, were at the time of the commencement of said action, and still are, citizens of the State of Texas and residents of the County of Henderson, and the Plaintiffs, L. A. McCoy and wife, Ila Mae McCoy, were at the time of the commencement of said action, and still are, citizens of the State of Texas and residents of the County of Anderson, all within the Tyler Division of the United States District Court for the Eastern District of Texas; and the Defendant, The Atlantic Refining Company, was at the time of the commencement

of this action, and still is, a private corporation, duly incorporated and existing under and by virtue of the laws of the State of Pennsylvania, and a citizen and resident of that State, and had, and has, its principal place of business in the City of Philadelphia, State of Pennsylvania.

IV.

This action is one in which the value of the matter in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs, in that heretofore there has been drilled by Petitioner an oil well upon the land covered by and described in said Declaration of Unit, which is now producng oil in paying quantities, and in consequence thereof, the value of the oil and gas lease which the Plaintiffs have heretofore executed upon the land described in Plaintiff's Petition, which Plaintffs by their action herein seek to cancel and rescind, possesses a value far in excess of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs.

V.

This action is one over which the District Courts of the United States are given original jurisdiction; and the proper Court to which this cause should be removed is the United States District Court for the Eastern District of Texas, Tyler Division.

VI.

Petitioner herewith presents a good and sufficient Bond, as provided by statute in such cases, conditioned that it

will pay all costs and disbursements which may be incurred by reason of these removal proceedings, if this Court shall hold that this action is not removable and was improperly removed thereto.

VII.

Petitioner herewith files a copy of all process, pleadings and orders heretofore served upon it in this action.

WHEREFORE, Petitioner herein, the Defendant in the above cause, prays that the above entitled and numbered cause be removed to this, the United States District Court for the Eastern District of Texas, Tyler Division, according to the statutes in such cases made and provided.

DATED this, the 15th day of December, A. D., 1961.

/s/ THOMAS B. RAMEY

Thomas B. Ramey
Citizens First National
Bank Bldg.,
Tyler, Texas 75701,
Attorney for Petitioner,
the Atlantic Refining Company.

Of Counsel:
RAMEY, BRELSFORD, HULL
& FLOCK,
Citizens First National
Bank Bldg.,
Tyler, Texas 75701.

(AFFIDAVIT OMITTED)

APPENDIX G

Motion To Remand Of Plaintiffs W. O. Hilton, Et Al, In The U. S. District Court.
(U.S. 5th Circuit Court Record, Volume 1, p. 16)

(Number and title omitted) (Filed 6-22-62)

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW W. O. Hilton and wife, Malvirin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, Plaintiffs in the above entitled and numbered cause, hereinafter called Plaintiffs, and respectfully move the Court, subject to their motion for non-suit heretofore filed in this cause, and the action of the Court thereon, to remand this cause to the District Court of Henderson County, Texas, and as grounds therefor respectfully show unto the Court the following:

1.

This suit affects the interests of numerous persons in and to the oil, gas and mineral royalty which may be produced from the lands described in Plaintiffs' Original Petition in this cause, and other lands described in the Declaration of Unit referred to in Plaintiffs' Original Petition. Such persons are all necessary parties and/or indispensable parties in the disposition of the matters in controversy in this cause, and no valid judgment can be rendered unless and until all said persons are made parties to this suit.

2.

Plaintiffs show the Court that the following persons own or claim an interest in and to the lands, or portions thereof,

described in said Declaration of Unit, and their respective residences are as shown below:

Fred M. Garrett	Frankston, Texas
C. S. McCain, Jr. et ux Cornelia D. McCain	c/o McCain, Mobley & Stephens, 1301 Petroleum Tower, Shreveport, Louisiana
Frances Walker McCain	Shreveport, Louisiana
Commercial Investment Company	Address Unknown
Edson Petroleum Company	1537 Esperson Building Houston, Texas
H. P. Riley	Box 63, Poynor, Texas
J. L. Wilcox	Route 4, Corsicana, Texas
Herbert Wilcox	Manchester, Missouri
Delta Drilling Company	Citizens Bank Building Tyler, Texas
W. O. Hilton and Malvirin Hilton	RFD 1, Frankston, Texas
L. A. McCoy and Ila Mae McCoy	RFD 1, Frankston, Texas
C. E. Willingham	319 W. Second, Tyler, Texas
J. W. Melton et ux Virgie Melton	RFD 1, Frankston, Texas
The Atlantic Refining Company	Dallas, Texas

Of the aforesaid and above named parties, only the Plaintiffs hereinbefore mentioned and The Atlantic Refining Company are presently parties to this suit.

WHEREFORE, premises considered, Plaintiffs pray that this motion to remand be granted, at the cost of Plaintiffs.

MOORE & HOLLAND

By /s/ WILLIS D. MOORE

Attorneys for Plaintiffs

APPENDIX H

Order Of U. S. District Court Denying Plaintiff W. O. Hilton, Et Al's Motion To Remand To State Court.

(U. S. 5th Circuit Court Record, Volume 1 at Page 34.)

(Number and title omitted) (Filed June 28, 1962)

On the 26th day of June, 1962, regularly came on to be heard the Motion of the Plaintiffs. W. O. Hilton and wife, Malvirin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, filed herein on June 22, 1962, to remand the above numbered and entitled cause to the District Court of Henderson County, Texas; and came said Plaintiffs, by their attorneys of record, and also came the Defendant, The Atlantic Refining Company, a corporation, by its attorneys of record; and the Court having heard and considered said Motion, and the evidence, and the argument of counsel pertaining thereto, and being of the opinion that Plaintiffs' said Motion is not well taken, rendered a decision in open Court on June 27, 1962, that Plaintiffs' said Motion be, and is, denied:

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion to Remand this cause to the District Court of Henderson County, Texas, is in all things denied and overruled, and that this cause shall remain on the docket of this Court for trial; to which action of the Court the Plaintiffs have duly excepted; and,

It appearing that during the course of the hearing on the aforesaid Motion, Plaintiffs announced in open Court that they desired to withdraw their Motion for Non-Suit heretofore filed in this cause on June 22, 1962; it is further

ORDERED that Plaintiffs' said Motion for Non-Suit shall be, and the same is hereby, dismissed.

SIGNED and ENTERED, this the 28th day of June, A. D., 1962.

/s/ JOE W. SHEEHY

Judge, U. S. District Court

APPENDIX I

Pre-Trial Order Including Stipulations And Approval Of Parties, And Made And Entered In the U. S. District Court, And Designated By W. O. Hilton Et Al, As Part Of The Record For Appeal To U. S. 5th Circuit Court.

(U.S. 5th Circuit Court Record, Volume 1, p. 40 and Exhibit to Atlantic's Motion for Summary Judgment)

(Number and title omitted) (Filed July 26, 1962)

A pre-trial conference was held in the above entitled cause before Honorable Joe W. Sheehy, Judge of said Court on the 26th day of July, 1962.

Willis D. Moore of the firm of Moore and Holland and James R. Lewis appeared as counsel for Plaintiffs and Cross-Defendants, W. O. HILTON, ET AL.

Thos. B. Ramey and Frank L. McClendon of the firm of Ramey, Brelsford, Hull & Flock appeared as counsel for Defendant and Cross-Plaintiff, THE ATLANTIC REFINING COMPANY.

I.

The following disposition has been heretofore made of pending motions preliminary to trial:

Heretofore on June 26, 1962, Plaintiffs announced in open Court that they desired to withdraw their Motion for Non-Suit and the Court ordered said Motion for Non-Suit dismissed. Also heretofore on June 26, 1962, the Court heard Plaintiffs' Motion to Remand this cause to the District Court of Henderson County, Texas, and said Motion was in all things denied and overruled to which action of the Court

the Plaintiffs duly excepted, and all stipulations herein contained are subject to said Plaintiffs' exceptions.

II.

In general the Plaintiffs and Cross-Defendants, W. O. HILTON, ET AL, claim that THE ATLANTIC REFINING COMPANY is a foreign corporation and that said Plaintiffs and Cross-Defendants are the owners of the title and in possession of an 82.713 acres, more or less, tract of land in the Alfred Benge Survey, Abstract No. 57, in Henderson County, Texas, described in their Amended Petition; that on or about June 30, 1961, Defendant and Cross-Plaintiff, THE ATLANTIC REFINING COMPANY, caused to be recorded a certain Declaration of Unit dated June 30, 1961, recorded in Volume 498, Page 389, of the Deed Records of Henderson County, Texas; that such instrument purports to include the above referred to tract within a unit for production of oil from the James Lime Formation; that such instrument creates an adverse claim and cloud on Plaintiffs', W. O. HILTON, ET AL., title which they allege should be removed, cancelled and held for naught, and pray that they have judgment removing cloud from title and such other relief as to which they are entitled under the law facts, as well as cost of suit.

III.

In general, the Defendant and Cross-Plaintiff, THE ATLANTIC REFINING COMPANY, admits that it is a foreign corporation and a non-resident of the State of Texas, incorporated in the State of Pennsylvania and having its prin-

cipal office in the City of Philadelphia, State of Pennsylvania; that said Defendant and Cross-Plaintiff denies the allegations of W. O. HILTON, ET AL, insofar as the ownership of the title and possession of the oil, gas and minerals in and under the land and premises therein described are concerned, in that said Defendant and Cross-Plaintiff, THE ATLANTIC REFINING COMPANY, claims that it is the owner of the valid subsisting Oil, Gas and Mineral Lease and leasehold title and estate in and to said land and premises, created and existing by virtue of a certain Oil and Gas Lease dated August 5, 1951, executed by said W. O. HILTON ET AL, as Lessors, in favor of B. L. Garrett, as Lessee, which is recorded in Volume 373, Page 255, of the Deed Records of Henderson County, Texas, together with all rights, title and privileges therein conveyed and conferred. THE ATLANTIC REFINING COMPANY admits that it executed and filed for record the Declaration of Unit referred to in the Amended Petition of W. O. HILTON, ET AL, but subject to the exception that said Declaration of Unit does not purport to include a small portion of the tract described in W. O. HILTON, ET AL's Petition consisting of approximately 2.173 acres out of the Southwestern portion of said tract. THE ATLANTIC REFINING COMPANY denies that said Declaration of Unit creates an adverse claim and cloud on Plaintiffs' title and denies that it should be removed, cancelled or held for naught as a cloud on Plaintiffs' W. O. HILTON, ET AL's title.

IV.

The following facts are established by the pleadings or are established by the stipulations or admissions of counsel as follows:

(1) Plaintiffs and Cross-Defendants, W. O. HILTON and wife, MALVRIN HILTON, are residents of Henderson County in the State of Texas, and L. A. McCoy and wife, ILA MAE McCOY, are residents of Smith County in the State of Texas, all within the Tyler Division of the United States District Court for the Eastern District of Texas; the Defendant and Cross-Plaintiff, THE ATLANTIC REFINING COMPANY, is a private corporation duly incorporated and existing under and by virtue of the laws of the State of Pennsylvania and a citizen and resident of that State and had and has its principal place of business in the City of Philadelphia, State of Pennsylvania. That this action is one in which the value of the matter in controversy exceeds the sum of TEN THOUSAND AND NO/100 ($10,000.00) DOLLARS exclusive of interest and cost in that heretofore there has been drilled by THE ATLANTIC REFINING COMPANY an oil well upon the land covered by and described in the above Declaration of Unit, which is now producing oil in paying quantities and in consequence thereof, the value of the Oil and Gas Lease which Plaintiffs, W. O. HILTON, ET AL. have heretofore executed upon the land and which said Plaintiffs by their action herein deny ownership in Defendant, possesses a value far in excess of TEN THOUSAND AND NO/100 ($10,000.00) DOLLARS exclusive of interest and cost.

(2) It is further stipulated and agreed that, subject to the claim of title of THE ATLANTIC REFINING COMPANY to the above Oil and Gas Lease and leasehold estate and all right, titles and privileges thereunder, that Plaintiffs and Cross-Defendants; W. O. HILTON and wife, MALVRIN HILTON, and L. A. McCOY and wife, ILA MAE McCOY, own, and subject to any royalty interest heretofore reserved or conveyed by them, the title to an 82.713 acres, more or less, tract of land lying in the Alfred Benge Survey, Abstract No. 57, in Henderson County, Texas, bounded on the west by the J. W. Melton tract and bounded on the North by a public road and the M. L. Collier and W. F. Westbrook tracts and bounded on the East by a road and the W. F. Westbrook, Maud Dansby and B. F. Douglas tracts and bounded on the South by the Larkin Smith and Clifford Emerson tracts, and which is the tract intended to be described in said Plaintiffs', W. O. HILTON, ET AL, Amended Petition. That said tract is the only tract now or ever owned or possessed by said Plaintiffs, W. O. HILTON, ET AL, in said Alfred Benge Survey or the adjoining surveys.

V.

(1) That on August 5, 1951, W. O. HILTON and wife, MALVRIN HILTON, and L. A. McCOY and wife, ILA MAE McCOY, executed an Oil and Gas Lease in favor of B. L. Garrett, which is recorded in Volume 373, Page 255 of the Deed Records of Henderson County, Texas, as set forth in the Exhibits below and that said Lease was assigned to THE ATLANTIC REFINING COMPANY. That Defendant, THE ATLANTIC REFINING COMPANY, admits and will require no further

proof in this cause or upon the trial thereof that the Plaintiffs have held peaceable and adverse possession of the surface of all the land described by bounds in the foregoing paragraph, cultivating, using or enjoying the same and erecting valuable improvements thereon, continuously and without interruption since on or about November 5, 1942, but this stipulation shall not prejudice the validity of the lease in controversy held by THE ATLANTIC REFINING COMPANY; it is further stipulated and agreed by and between the parties hereto that the State of Texas parted with its title to said land prior to the year 1850.

(2) That THE ATLANTIC REFINING COMPANY claims to own a valid and subsisting Oil and Gas Lease dated August 5, 1951, executed by J. W. Melton and wife, Virgie Melton, and recorded in Volume 372, Page 415, of the Deed Records of Henderson County, Texas, covering said J. W. Melton tract consisting of 83.815 acres, more or less, adjoining said tract on the West.

(3) That as shown by the Exhibits below, the Railroad Commission, Oil and Gas Division, of the State of Texas, on March 4, 1961, promulgated on its Oil and Gas Docket No. 120 its Order No. 6-45,322 adopting rules and regulations for the Fairway (James Lime) Field in Anderson and Henderson Counties, Texas, whereby pooled units for oil were provided for as 80 acres plus a tolerance of 80 acres, making a pooled unit for oil of not more than 160 acres as shown by said Exhibits below. That on June 12, 1961, the Railroad Commission of Texas entered its Order effective July 1, 1961, merging the West Fairway (James Lime)

Field and the West Frankston (James Lime) Field into the Fairway (James Lime) Field, including the adoption of the Fairway Field rules providing for 160 acres for each oil unit as shown by the below Exhibits and which area includes the land here in controversy.

(4) That THE ATLANTIC REFINING COMPANY made its drilling location on the J. W. Melton tract 660 feet from the North Line and 330 feet from the East Line and commenced drilling by spudding in the well on April 30, 1961; that drilling was continued until the well was completed on June 8, 1961, in the James Lime Formation and after testing and further equipping said well actual production began on June 25, 1961, and has continued down to date. That the W. O. HILTON, ET AL, tract is completely surrounded by oil producing property at the present time.

(5) That as shown by the Exhibits below, on June 30, 1961, THE ATLANTIC REFINING COMPANY, reciting itself to be the owner of the above J. W. Melton lease and the above W. O. Hilton et al lease and reciting its pooling powers under said leases and the above Orders of the Railroad Commission, made the Declaration of Unit which was filed on June 30, 1961, in Volume 498, Page 389, of the Henderson County Deed Records, whereby a 160 acre unit was formed for the production of oil from the James Lime Formation and whereby there was pooled and combined exactly 80 acres from the J. W. Melton lease and exactly 80 acres from the W. O. Hilton et al. lease, making the total of 160 acres and including what THE ATLANTIC REFINING COMPANY claims to be all of the W. O. Hilton et al land except a 2.713 acre

area out of the Southwest portion of said land; that said 2.713 acre area belonging to Plaintiffs and claimed by Defendants under its said lease has been pooled as a part of the Cities Service Oil Company 160 acre Oil Unit adjoining on the South.

(6) Plaintiffs' lawsuit was thereafter filed on November 22, 1961.

(7) That under the above referred to lease executed by W. O. HILTON, ET AL and now owned by THE ATLANTIC REFINING COMPANY, and which is shown in the Exhibits below, all annual delay rentals for the primary term of said lease were duly and timely paid and deposited by THE ATLANTIC REFINING COMPANY to the depository named therein, the First State Bank of Frankston, Texas, which bank deposited said rentals to the accounts of said W. O. HILTON, ET AL, who did not refuse the payments and deposits of said delay rentals.

VI.

(1) The contested issues of fact and law are those issues a statement of which each party has furnished to the other party copies which are hereto attached, and are herein referred to as Exhibit A and Exhibit B.

(2) The ultimate contested issue of law is whether or not the Oil and Gas Lease dated August 5, 1951, executed by Plaintiffs, W. O. HILTON, ET AL to B. L. GARRETT, in Volume 373, Page 255, of the Deed Records of Henderson County, Texas, and which Lease is now owned by The Atlantic Re-

fining Company, is a valid Oil and Gas Lease. Each party has furnished to the other a statement of the related issues pertaining to the aforesaid ultimate issue as shown by the attached Exhibit A and Exhibit B.

VII.

The below Exhibits were marked and received in evidence. The authenticity of these Exhibits has been stipulated, but they have been received subject to objections of the opposing party, if any, at the trial, to their relevancy, materiality and sufficiency except authenticity. If other Exhibits are to be offered and their necessity reasonably can be anticipated, they will be submitted to opposing counsel at least three (3) days prior to trial. The Exhibits marked and received in evidence are as follows:

PLAINTIFFS' EXHIBITS NUMBERED AS FOLLOWS:

(1) The Deed dated January 29, 1859 from J. M. Doan to John Miller, recorded in Volume M, Page 453, of the Henderson County Deed Records;

(2) Declaration of Unit dated June 30, 1961, and executed by The Atlantic Refining Company and filed for record in Volume 498, Page 389, of the Henderson County Deed Records on June 30, 1961.

DEFENDANT'S EXHIBITS NUMBERED AS FOLLOWS:

(1) Patent dated March 13, 1849, from the State of Texas to Alfred Benge recorded in Volume 82, Page 53, of the Henderson County Deed Records at Page 4 of Abstract No. 14,989.

(2) Deed dated December 16, 1895, from John W. Henderson to Sam Dickerson, recorded in Vol. 42, Page 503, of the Henderson County Deed Records, covering a called 160 acre tract at Page 83, of Abstract No. 14,989.

(3) Deed dated November 2, 1904, from S. H. Dickerson, et ux, to S. A. Swanson, recorded in Vol. 54, Page 199, of the Henderson County Deed Records conveying an 80 acre tract being the West one-half of the foregoing 160 acres as shown at Page 89 of Abstract No. 14,989.

(4) Deed dated October 11, 1910, from S. A. Swanson, et ux, to W. J. Barfield, recorded in Vol. 66, Page 467, of the Henderson County Deed Records conveying the foregoing 80 acres, being the West one-half of the above 160 acres. See Page 92, of Abstract No. 14,989.

(5) Deed dated February 5, 1912, from Mary C. Barfield (surviving wife of W. J. Barfield) to John W. Melton (her son) recorded in Vol. 71, Page 2 of the Henderson County Deed Records, at Page 95 of Abstract No. 14,989.

(6) Oil and Gas Lease dated August 5, 1951, from J. W. Melton and wife, Virgie Melton, to B. L. Garrett recorded in Vol. 372, Page 415, of the Henderson County Deed Records at Page 144 of Abstract No. 14,989.

(7) Oil and Gas Lease Assignment dated August 6, 1951; from B. L. Garrett to E. C. Casey recorded in Vol. 414, Page 372 of the Henderson County Deed Records, assigning the foregoing Lease and appearing at Page 155 of Abstract No. 14,989.

(8) Oil and Gas Lease Assignment dated August 7, 1951, from E. C. Casey to The Atlantic Refining Company recorded in Vol. 373, Page 270, of the Henderson County Deed Records, assigning the foregoing lease and as shown at Page 159, of Abstract No. 14,989.

(9) Royalty Deed dated November 12, 1960, executed by J. W. Melton, et ux, to C. E. Willingham, recorded in Vol. 489, Page 455, of the Henderson County Deed Records, appearing at Page 163, of Abstract No. 14,989.

(10) Deed dated November 3, 1908, from S. H. Dickerson, et ux to Frank Guiher recorded in Vol. 165, Page 91 of the Henderson County Deed Records, conveying the W. O. Hilton, et al land and appearing at Page 9 of Abstract No. 14,990.

(11) Deed dated January 5, 1911, from Frank Guiher to J. M. Curry recorded in Vol. 67, Page 159, of the Henderson County Deed Records, conveying the same land conveyed in the foregoing Deed to Frank Guiher and as appears at Page 11, of Abstract No. 14,990.

(12) Divorce Decree, including approval of Property Settlement Agreement, which Divorce Decree is dated September 10, 1915, in Cause No. 3876, styled J. M. Curry vs. Nettie Curry in the District Court of Henderson County, Texas, as shown at Page 16 of Abstract No. 19,900.

(13) Property Settlement Agreement dated September 9, 1915, executed by J. M. Curry and Nettie Belle Curry and filed for record in Cause No. 3876, styled J. M. Curry vs. Nettie Curry in the District Court of Henderson County, Texas, and as shown by certified photostatic copy filed therein.

(14) Deed dated October 23, 1915, from J. M. Curry to E. M. Ganze recorded in Vol. 80, Page 206, of the Henderson County Deed Records, conveying what is called to be a 55 acre tract and as shown at Page 20 of Abstract No. 14,990.

(15) Deed dated October 23, 1915, from J. M. Curry to E. M. Ganze recorded in Vol. 112, Page 121, of the Henderson County Deed Records, conveying a 55 acre tract off of the North part of the 80 acre tract acquired above by J. M. Curry and as shown at Page 22 of Abstract No. 14,990.

(16) Deed dated December 29, 1915, from Nettie Curry a feme sole, to E. M. Ganze, in Vol. 77, Page 438,

of the Henderson County Deed Records, conveying a 25 acre tract off of the South portion of the 80 acre tract acquired by J. M. Curry and as shown at Page 24 of Abstract No. 14,990.

(17) Deed dated December 2, 1924, from E. M. Ganze, et ux to F. N. Drane, conveying First Tract called to contain 55 acres and Second Tract called to contain 25 acres and which Deed is recorded in Vol. 117, Page 651, of the Henderson County Deed Records and appears at Page 31, of Abstract No. 14,990.

(18) Deed dated December 27, 1924, from F. N. Drane to J. C. Wilcox, conveying First Tract called to contain 55 acres and Second Tract called to contain 25 acres making the total of 80 acres and which Deed is recorded in Vol. 109, Page 497, of the Henderson County Deed Records, and appears at Page 34, of Abstract No. 14,990.

(19) Deed dated August 3, 1925, from J. C. Wilcox and wife, Nora Wilcox, to Tom B. Gilliland recorded in Vol. 126, Page 260, of the Henderson County Deed Records conveying the land acquired above by J. C. Wilcox and reserving "one-half of the one-eighth interest" on all oil and gas. And which Deed appears at Page 40 of Abstract No. 14,990.

(20) Deed dated July 12, 1937, from Tom B. Gilliland to T. O. Milner, conveying the foregoing land and recorded in Vol. 222, Page 80, of the Henderson County Deed Records and appearing at Page 79 of Abstract No. 14,990.

(21) Deed dated July 29, 1937, from T. O. Milner, et ux, to W. A. Hogue, recorded in Vol. 188, Page 40, of the Henderson County Deed Records, conveying the foregoing land, and which Deed appears at Page 81 of Abstract No. 14,990.

(22) Deed dated October 11, 1938, from W. A. Hogue to T. O. Milner, conveying the foregoing land and recorded in Vol. 222, Page 420, of the Henderson County Deed Records, and appearing at Page 88 of Abstract No. 14,990.

(23) Deed dated October 11, 1938, from T. O. Milner, et ux, to W. A. Hogue, recorded in Vol. 323, Page 336, of the Henderson County Deed Records, conveying the foregoing land and appearing at Page 92, of Abstract No. 14,990.

(24) Divorce Decree dated June 4, 1940, in Cause No. 3468, styled W. A. Hogue vs. Ida Verna Hogue in the District Court of Henderson County, Texas, and appearing at Page 103, of Abstract No. 14,990.

(25) Deed dated July 20, 1940, from Ida Hogue, a feme sole, to W. A. Hogue, recorded in Vol. 243, Page 308 of the Henderson County Deed Records, conveying the foregoing land and which Deed appears at Page 104 of Abstract No. 14,990.

(26) Deed dated November 5, 1942, executed by W. A. Hogue and wife, Eva Hogue, to W. O. Hilton and L. A. McCoy, recorded in Vol. 253, Page 234, of the Henderson County Deed Records, and conveying a tract called to contain 80 acres, and which Deed appears at Page 112 of Abstract No. 14,990.

(27) Mechanic's Lien Contract dated June 16, 1947, executed by W. O. Hilton and wife, Malvrin Hilton, to Harry Williams, recorded in Vol. 8, Page 6, of the Mechanic's Lien Records of Henderson County, Texas, and appearing at Page 133 of Abstract No. 14,990.

(28) Oil and Gas Lease dated August 5, 1951, executed by W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, to B. L. Garrett recorded in Vol. 373, Page 255, of the Henderson County Deed Records, describing what is called to be an 80 acre tract in two tracts of 55 acres and 25 acres and which lease appears at Page 139 of Abstract No. 14,990.

(29) Oil and Gas Lease Assignment dated August 6, 1951, from B. L. Garrett to E. C. Casey recorded in Vol.

320, Page 481, of the Henderson County Deed Records, assigning the foregoing Lease and as shown at Page 150, of Abstract No. 14,990.

(30) Oil and Gas Lease Assignment dated August 7, 1951, from E. C. Casey to The Atlantic Refining Company recorded in Vol. 373, Page 260 of the Henderson County Deed Records, assigning the foregoing Lease and as shown at Page 153 of Abstract No. 14,990.

(31) Royalty Deed dated April 1, 1961, from W. A. Hilton and wife, Malvrin Hilton and L. A. McCoy and wife, Ila Mae McCoy, to H. P. Riley, recorded in Vol. 494, Page 259, of the Henderson County Deed Records, appearing at Page 21 of Abstract No. 15,126.

(32) Royalty Deed dated April , 1961, (acknowledged April 25, 1961) executed by W. O. Hilton and wife, Malvrin Hilton, to H. P. Riley, recorded in Vol. 495, Page 190, of the Henderson County Deed Records stating that it is to correct the foregoing Deed in Vol. 494, Page 259, and which appears at Page 72, of Abstract No. 15,126.

(33) Royalty Deed dated May 6, 1961, executed by W. O. Hilton and wife, Malvrin Hilton, to H. P. Riley recorded in Vol. 495, Page 417, of the Henderson County Deed Records, and stating that it is to correct the foregoing Royalty Deeds in Vol. 494, Page 259, and in Vol. 495, Page 190, and which Correction Royalty Deed appears at Page 99, of Abstract No. 15,126.

(34) Royalty Deed dated June 19, 1961, executed by W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, to Elise M. Young, recorded in Vol. 497, Page 558, of the Henderson County Deed Records and which appears at Page 128 of Abstract No. 15,126.

(35) Declaration of Unit dated June 30, 1961 and executed by The Atlantic Refining Company and filed

for record in Vol. 498, Page 389, of the Henderson County Deed Records on June 30, 1961, and appearing at Page 134, of Abstract No. 15,126.

(36) Royalty Deed dated September 7, 1961, executed by W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, to James A. Latham, recorded in Vol. 503, Page 157, of the Henderson County Deed Records and appearing at Page 16 of Abstract No. 15,302.

(37) Affidavit dated June 8, 1945, executed by John R. Corley, recorded in Vol. 8, Page 415, of the Miscellaneous Records of Henderson County, Texas, and stating the marital history and heirship of J. C. Wilcox and wife, Nora Wilcox, who reserved the royalty interest in the above conveyance dated August 3, 1925, from J. C. Wilcox and wife, Nora Wilcox to Tom B. Gilliland, in Vol. 126, Page 260, of the Henderson County Deed Records. This Affidavit appears at Page 156 of Abstract No. 14,990.

(38) Royalty Deed dated May 29, 1944, from W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, to Archie Price in Vol. 281, Page 442, of the Henderson County Deed Records, which appears at Page 117, of Abstract No. 14,990. It is agreed by the parties that the interest conveyed by this Royalty Deed was conveyed to Delta Drilling Company.

(39) Reference is made to the royalty interest reserved to J. C. Wilcox and wife, Nora Wilcox, in the Deed listed under (19) above dated August 3, 1925, from J. C. Wilcox and wife, Nora Wilcox, to Tom B. Gilliland, recorded in Vol. 126, Page 260 of the Henderson County Deed Records. Reference is also made to the affidavit listed under (37) above dated June 8, 1945, by John R. Corley in Vol. 8, Page 415 of the Miscellaneous Records of Henderson County, Texas, stating the marital history and heirship of J. C. Wil-

cox and wife, Nora Wilcox. It is agreed that the royalty interest of Nora Wilcox was conveyed to Fred M. Garrett who is now the owner of same. It is further agreed that the royalty interests of the children and heirs of J. C. Wlcox, deceased, were all conveyed to H. P. Riley except the interest of J. L. Wilcox and Herbert Wilcox who still own their interests. It is further agreed that all of the heirs of J. C. Wilcox, deceased, who conveyed to H. P. Riley executed in favor of H. P. Riley Correction Deeds correcting the description of the land so as to show the beginning corner of the 55 acre portion of the called 80 acre tract as "Beginning at the NW corner of an 80 acre tract of land heretofore bought by J. M. Curry from Frank Guiher."

(40) Royalty Deed dated April 19, 1961 from H. P. Riley to Frances Walker McCain, recorded in Vol. 494, Page 614 of the Henderson County Deed Records appearing at Page 60 of Abstract No. 15,126.

(41) Royalty Deed dated May 4, 1961, from Frances Walker McCain to C. S. McCain, Jr. and wife, Cornelia D. McCain, recorded in Vol. 495, Page 527 of the Henderson County Deed Records and appearing at Page 88 of Abstract No. 15,126.

(42) Royalty Deed dated April 25, 1961 from H. P. Riley to Commercial Investment Company recorded in Vol. 495, Page 427 of the Henderson County Deed Records and appearing at Page 78 of Abstract No. 15,126.

(43) Royalty Deed dated April 27, 1961 executed by H. P. Riley to Edson Petroleum Company recorded in Vol. 495, Page 317 of the Henderson County Deed Records and appearing at Page 83 of Abstract No. 15,126.

(44) Oil and Gas Lease Ratification dated May 25, 1961, executed by H. P. Riley in favor of The Atlantic Re-

fining Company recorded in Vol. 499, Page 77 of the Henderson County Deed Records and appearing at Page 105 of Abstract No. 15,126.

(45) Oil and Gas Lease Ratification dated June 1, 1961, executed by C. S. McCain, Jr., and wife, Cornelia D. McCain, and Frances Walker McCain to The Atlantic Refining Company, recorded in Vol. 499, Page 77 of the Henderson County Deed Records and appearing at Page 105 of Abstract No. 15,126.

(46) Oil and Gas Lease Ratification dated June 9, 1961, executed by J. L. Wilcox and wife, Thelma Wilcox, and Herbert Wilcox in favor of the Atlantic Refining Company, recorded in Vol. 499, Page 78 of the Henderson County Deed Records and appearing at Page 113 of Abstract No. 15,126.

(47) Oil and Gas Lease Ratification dated August 4, 1961, executed by Delta Drilling Company to The Atlantic Refining Company, recorded in Vol. 500, Page 574 of the Henderson County Deed Records, appearing at Page 23 of Abstract No. 15,302.

(48) Royalty Deed dated September 7, 1961, executed by Commercial Investment Company to James A. Latham recorded in Vol. 502, Page 503, of the Henderson County Deed Records and appearing at Page 4 of Abstract No. 15,302.

(49) Royalty Deed dated September 7, 1961, executed by Commercial Investment Company to Henry Moore III recorded in Vol. 503, Page 9 of the Henderson County Deed Records and appearing at Page 10 of Abstract No. 15,302.

(50) Title Questionnaire executed by W. O. Hilton and L. A. McCoy on August 5, 1951.

(51) Plat of land identified by Herbert Daugherty, Surveyor.

9.

The following amendments of the pleadings were allowed:

Plaintiffs First Amended Petition and

Defendants Amended Answer and Cross-Action.

APPROVED:

/s/ WILLIS D. MOORE

/s/ JAMES R. LEWIS

Attorneys for Plaintiffs

APPROVED:

/s/ THOS. B. RAMEY

/s/ FRANK L. MCCLENDON

Attorneys for Defendant

Dated at Tyler, Texas this the 26th day of July, 1962.

/s/ JOE W. SHEEHY

Judge

EXHIBIT "A" TO PRE-TRIAL ORDER

RE: PRE-TRIAL ORDER

Plaintiffs, W. O. HILTON and wife, MALVRIN HILTON, and L. A. McCoy, and wife ILA MAE McCOY, hereinafter called Plaintiffs, hereby furnish to Defendant's counsel the follow-

ing statement of issues which Plaintiffs will offer evidence to support from Plaintiffs' standpoint:

1.

The description of the land referred to in the oil, gas and mineral lease under which The Atlantic Refining Company is claiming in this cause is not sufficient to identify, or to furnish the means of identifying, any land that can be located upon the ground.

2.

The descriptive clause contained in the lease in controversy relative to "all land owned or claimed by Lessor adjacent or contiguous to the land particularly described above" in said lease has no application in this case, since none of the land in controversy is either "adjacent" or "contiguous" to the land so particularly described in said lease.

3.

Plaintiffs accepted no payment of delay rentals under any oil and gas lease covering any land that can be identified as the land described in Plaintiffs' First Amended Original Complaint.

4.

Neither of the Plaintiffs nor any other person authorized by either of them has heretofore made any representations to the Lessee named in the lease in controversy that said

lease covered any of the land described in Plaintiffs' First Amended Original Complaint.

5.

Neither of the Plaintiffs has executed any royalty deed sufficiently and correctly describing the land referred to and described in their First Amended Original Complaint.

6.

Neither of the Plaintiffs has executed any royalty deed or other instrument containing any specific reference to or adoption of the oil and gas lease in controversy, nor have they executed any instrument which does or could operate as a ratification of any oil and gas lease covering or applying to the land described in Plaintiffs' First Amended Original Complaint.

7.

By the execution and filing of the Unit Declaration dated June 30, 1961, recorded in Vol. 498, Page 389 of the Deed Records of Henderson County, Texas, Defendant has placed a cloud upon Plaintiffs' title to the land described in their First Amended Original Complaint.

8.

Plaintiffs have had and held peaceable and adverse Possession of the land described in their First Amended Original Complaint, and the minerals therein and thereunder, cultivating, using or enjoying the same and making valuable

improvements thereon, continuously and without interruption for more than ten years prior to the filing of this suit.

/s/ WILLIS D. MOORE,

Willis D. Moore,
Athens, Texas,

/s/ JAMES R. LEWIS,

James R. Lewis,
Fair Foundation Bldg.,
Tyler, Texas,
ATTORNEYS FOR PLAINTIFFS.

OF COUNSEL:
MOORE & HOLLAND,
Athens, Texas.

EXHIBIT "B" TO PRE-TRIAL ORDER
RE: PRE-TRIAL ORDER

Defendant, THE ATLANTIC REFINING COMPANY, hereby furnishes to Plaintiffs' counsel the following statement of issues which Defendant will offer evidence to support from Defendant's standpoint:

I.

The Atlantic Refining Company's Lease does in fact adequately describe Plaintiffs' land, according to accepted rules of law governing descriptions of real estate in conveyances and oil leases.

II.

That Plaintiffs' land being the only land that Plaintiffs own in the Alfred Benge Survey, it was the intention of Plaintiffs to lease said land when they executed the lease in controversy to B. L. Garrett.

III.

In view of the all-inclusive descriptive clause contained in the lease in controversy, said lease does cover and include Plaintiffs' land.

IV.

It was the intention of Plaintiffs as Lessors and B. L. Garrett as Lessee when the lease in controversy was executed that said lease should cover and affect Plaintiffs' land in the Alfred Benge Survey.

V.

That Plaintiffs have executed royalty deeds in favor of a number of parties in which Plaintiffs' land was correctly described, and references therein are made to the subsisting oil and gas lease which Defendant owns and therefore same amounts to a ratification, adoption and confirmation by Plaintiffs of Defendant's lease.

VI.

The Plaintiffs having accepted the payment in cash of a substantial consideration for the execution of the lease in

controversy and also having accepted the payment of nine annual delay rentals as specified in the lease, Plaintiffs are now estopped to deny the validity of the lease in controversy.

VII.

When the lease in controversy was executed the Plaintiffs represented to the Lessee that said lease covered and affected the land and premises in controversy, and Plaintiffs therefore are estopped to deny the validity of said lease.

VIII.

That in view of the facts and circumstances hereinabove recited in the foregoing issues, the Plaintiffs are estopped to plead and assert the ten (10) year Statute of Limitations as a defense to Defendant's claim and title to the lease in controversy.

/s/ THOS. B. RAMEY,
Thos. B. Ramey,

/s/ FRANK L. MCCLENDON,
Frank L. McClendon
Citizens First National Bank
Bldg. Tyler, Texas,
ATTORNEYS FOR DEFENDANT.

OF COUNSEL:

RAMEY, BRELSFORD,
HULL & FLOCK,
Tyler, Texas.

APPENDIX J

Findings Of Fact And Conclusions Of Law By U. S. District Court And Designated By W. O. Hilton, Et Al As Part Of Record For Appeal To U. S. 5th Circuit Court.

(U. S. 5th Circuit Court Record Volume 1, pps. 80-89)

(Number and title omitted) (Filed Oct. 18, 1962)

The above cause came on regularly for trial and the Court having duly considered the pleadings, the stipulations in the pre-trial order, and the evidence, and being fully advised in the premises, now finds the following:

FINDINGS OF FACT

(Paragraphs 1, 2, and 3 are omitted)

4. During the first half of the Year 1961, the Railroad Commission of Texas established rules and regulations respecting the development of leases in the area in which the land in controversy *is* located in what is known as the Fairway Field. Such regulations provided for drilling units of not less than eighty (80) acres of land and not more than one hundred sixty (160) acres of land. Accordingly, by instrument dated June 30, 1961, which was duly recorded during the primary term of the aforesaid lease, Defendant, The Atlantic Refining Company, promulgated a Declaration of Unitization which embraced 80 acres of the land in controversy and also 80 acres of land situated to the West thereof, which is owned by J. W. Melton and upon which Defendant also owned the subsisting oil and gas lease. A producing oil well was drilled and completed by Defendant on said Unit at a location on the Melton tract of land,

before the expiration of the primary term of both of the leases covering the lands included in the Unit. This well has been producing oil in paying quantities ever since its completion.

5. A recent resurvey of Plaintiffs' land discloses that said tract contains 82.713 acres instead of 80 acres. There was omitted from the aforesaid Unit created by the Defendant 2.713 acres off the South end of Plaintiffs' land, and this small parcel of land was subsequently included in another 160 acre drilling Unit which was formed by another oil company, to-wit, Cities Service Oil Company.

(Paragraph 6. is omited as not here necessary.)

7. Plaintiffs' counsel announced in open Court as well as in Plaintiff's Memorandum Briefs which were submitted to the Court, that Plaintiffs were not relying upon the aforesaid error in the beginning call of the description of said property. In this connection, Plaintiffs' counsel contended as the sole basis of this suit that there existed a defect in the description in early deeds in the chain of title to this property. The alleged defect * * * (omitted as not being here necessary.)

(Paragraphs 8, 9, 10, 11, 12 and 13 are omitted)

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court concludes as a matter of law, as follows:

1. That the description of land contained in the oil and gas lease dated August 5, 1951, which Plaintiffs, as Lessors,

executed in favor of B. L. Garrett, as Lessee, and which is now held and owned by Defendant, is adequate and sufficient to describe the land in controversy with reasonable certainty, when resort is had to the references and data therein mentioned as being the same land which is claimed and occupied by Plaintiffs.

2. That the land which is claimed and occupied by Plaintiffs is the same land which was intended to be covered and affected by the aforesaid lease which Plaintiffs, as Lessors, executed in favor of B. L. Garrett, as Lessee, and which is now held and owned by Defendant.

3. That although Plaintiffs have been in possession and occupation of the land in controversy, cultivating, using and living upon the same for more than ten consecutive years, Plaintiffs have not perfected a title by limitation to the oil and gas thereunder as against Defendant's oil and gas leasehold interest which Defendant holds by virtue of being the owner of the lease dated August 5, 1951, which Plaintiffs, as Lessors, executed in favor of B. L. Garrett, as Lessee.

4. That the above mentioned oil and gas lease which Defendant holds and owns is a valid and subsisting lease which covers and affects the land in controversy, and said lease is now in full force and effect.

5. That Plaintiffs have by their acts and conduct fully ratified and confirmed the validity of the aforesaid oil and gas lease dated August 5, 1951, as well as the ownership thereof by Defendant.

6. That Plaintiffs have by their acts and conduct estopped themselves to contest the validity of the aforesaid oil and gas lease, as well as the ownership thereof by Defendant.

7. That the Declaration of Unit dated June 30, 1961, incorporating 80 acres of the land in controversy, which Defendant caused to be executed and recorded, is valid and in full force and effect and the same creates no cloud or adverse claim upon plaintiffs' title to the land in controversy which should be removed.

8. That Defendant has shown by proper evidence that it is entitled to recover upon its Counter-Claim the title and possession of the subsisting oil and gas leasehold estate covering and affecting the land in controversy, according to the terms and provisions of the lease dated August 5, 1951, which was executed by Plaintiffs, as Lessors, in favor of B. L. Garrett, as Lessee.

ORDER FOR JUDGMENT

WHEREFORE, it is considered by the Court that decree should be entered herein that Plaintiffs recover nothing by their suit and that Defendant recover Judgment on its Counter-Claim for title and possession of the oil and gas leasehold estate in the land in controversy as evidenced by the terms and provisions of the above mentioned oil and gas lease.

DATED this the 18th day of October, 1962.

/s/ JOE W. SHEEHY
Judge, United States District Court

APPENDIX K

Decree And Judgment After Trial on Merits In The U. S. District Court

(U.S. 5th Circuit Court Record, Volume 1, p. 89)

(Number and title omitted) (Filed Oct. 18, 1962)

On the 21st day of September, 1962, regularly came on for trial the above entitled and numbered cause, and came all parties by their attorneys of record and answered ready for trial; and no jury having been demanded, the Court heard and considered the pleadings, the pre-trial stipulations and pre-trial order, and the evidence as introduced by all parties; and the Court being of the opinion that the Plaintiffs, W. O. HILTON and wife, MALVIRIN HILTON, and L. A. McCOY and wife, ILA MAE McCOY, are not entitled to recover by their suit herein against the Defendant, THE ATLANTIC REFINING COMPANY; and that said Defendant should recover of Plaintiffs upon its counterclaim:

It is, therefore, ORDERED, ADJUDGED and DECREED that the Plaintiffs, W. O. Hilton and wife, Malvirin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, recover nothing by their suit against the Defendant, The Atlantic Refining Company; and Plaintiffs are denied all relief prayed for herein.

It is further ORDERED, ADJUDGED and DECREED that the Defendant, The Atlantic Refining Company, recover judgment upon its Counter-Claim of the Plaintiffs, W. O. Hilton and

wife, Malvirin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, the title and possession of the subsisting oil and gas leasehold estate as evidenced by the terms and provisions of that certain oil and gas lease dated August 5, 1951, executed by Plaintiffs, as Lessors, in favor of B. L. Garrett, as Lessee, which lease is recorded in Vol. 373, Page 255, of the Deed Records of Henderson County, Texas; together with all rights, titles and provisions therein conveyed and conferred, insofar as said lease covers and affects the following described land and premises, to-wit:

Situated in the Alfred Benge Survey, Abstract No. 57, Henderson County, Texas, and

BEGINNING at a point on the North line of the said Alfred Benge Survey, which is the Northeast corner of that certain tract conveyed by March C. Barfield to John W. Melton by deed dated February 5, 1912, recorded in Volume 71, Page 2, Deed Records of Henderson County, Texas;

THENCE South 80 deg. 37.9 min. East 1251.7 feet with the North Boundary Line of the said Alfred Benge Survey to corner in public road;

THENCE South 10 deg. 49.7 min. West 2959.8 feet to corner;

THENCE North 80 deg. 02.3 min. West 975.7 feet;

THENCE North 78 deg. 12 min. West 213.6 feet to corner;

THENCE North 09 deg. 37 min. East 2939.7 feet to place of beginning,

CONTAINING 82.713 acres of land, more or less.

It is further ORDERED that all costs in this cause incurred be and the same are hereby assessed against the Plaintiffs, for which execution may issue.

SIGNED and ENTERED this the 18th day of October, 1962.

/s/ JOE W. SHEEHY

United States District Judge

APPENDIX L

Designation Of Record For Appeal From U. S. District Court To U. S. 5th Circuit Court By W. O. Hilton, Et Al As Appellants

(U.S. 5th Circuit Court Record Volume 1, p. 98)

(Number and title omitted) (Filed Dec. 12, 1962)

Pursuant to Rule 75(a) of the Rules of Civil Procedure, Appellants hereby designate the following portion of the record, proceedings and evidence to be contained in the record on appeal in this action.

1. Petition for Removal, together with Notice of such petition.
2. Defendant's Original Answer.
3. Defendant's Counter-Claim.
4. Plaintiffs' Motion to Remand.
5. Defendant's Answer to Plaintiffs' Motion to Remand.
6. All proceedings, evidence, testimony and exhibits heard and introduced at the hearing on Plaintiffs' Motion to Remand.
7. Order Denying Plaintiffs' Motion to Remand.
8. Plaintiffs' Original Answer to Defendant's Counter-Claim.
9. Plaintiffs' First Amended Original Complaint.
10. Pre-trial Order.

11. Defendant's Second Amended Answer and Amended Counter-Claim.
12. Plaintiffs' Original Answer to Defendant's Second Amended Counter-Claim.
13. Motion for Withdrawal as Attorneys for Plaintiffs.
14. Order Granting Motion for Withdrawal as Attorneys for Plaintiffs.
15. Findings of Fact and Conclusions.
16. Judgment of the Court.
17. Motion for Amendment of Findings of Fact.
18. Order on the aforesaid motion.
19. Notice of Appeal filed November 17, 1962.
20. Order Allowing Late Deposit for Costs on Appeal.
21. Cash Deposit for Costs on Appeal.
22. Appellants' Statement of Points.
23. This designation.

/s/ WILLIS D. MOORE,

Willis D. Moore,
P. O. Box 392,
Athens, Texas,
ATTORNEYS FOR APPELLANTS.

APPENDIX M

Plaintiffs W. O. Hilton Et Al Second Amended Petition Filed After Remand To State District Court

(State District Court Transcript pps. 4-11)

(Number and title omitted) (Filed April 20, 1967)

TO THE HONORABLE JUDGE OF SAID COURT:

W. O. Hilton and wife, Malvirin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, and Willis D. Moore, Plaintiffs herein, file this Second Amended Original Petition complaining of Atlantic Richfield Company, a Pennsylvania corporation, and the other Defendants named in Subparagraph 1(c) and 1(d) below, and for cause of action respectfully allege:

1.

(a) Plaintiffs W. O. Hilton and wife, Malvirin Hilton reside in Henderson County, Texas. Plaintiffs L. A. McCoy and wife, Ila Mae McCoy, reside in Smith County, Texas. Plaintiff Willis D. Moore resides in Henderson County, Texas.

(b) Atlantic Richfield Company (herein called "Defendant Atlantic Richfield"), a Pennsylvania corporation, with authority to transact business in Texas, is the successor in interest, by merger, of The Atlantic Refining Company, the original Defendant in this Action, and is presently before the Court.

(c) Cities Service Petroleum Company (herein called "Defendant Cities Service") is a Delaware corporation with

authority to transact business in Texas, whose registered agent for service in Texas is United States Corporation Company, Brown Building, Austin, Travis County, Texas.

(d) The following Defendants

(1) Fred M. Garrett, who resides in Frankston, Henderson County, Texas;

(2) Edson Petroleum Company, a Delaware corporation, with authority to transact business in Texas, its registered agent for service being CT Corporation System, 811 Dallas Avenue, Houston, Harris County, Texas;

(3) H. P. Riley, who resides in Poyner, Henderson County, Texas;

(4) James A. Latham, who resides in Shreveport, Caddo Parish, Louisiana;

(5) Commercial Investment Company, a Texas corporation, its registered agent for service in Texas being Austin Prestwood, 1409 San Jacinto Street, Houston, Harris County, Texas;

(6) Elise M. Young, who resides in Oklahoma City, Oklahoma County, Oklahoma;

(7) J. L. Wilcox, who resides at Route 4, Corsicana, Navarro County, Texas;

(8) C. S. McCain, Jr., and wife, Cornelia McCain, who reside in Shreveport, Caddo Parish, Louisiana;

(9) Frances Walker McCain, a widow, who resides in Shreveport, Caddo Parish, Louisiana (or Jackson County, Missouri);

(10) Herbert Wilcox, who resides in Manchester, St. Louis County, Missouri;

(11) J. W. Melton and wife, Virgie Melton, who reside in Frankston, Henderson County, Texas;

(12) C. E. Willingham, who resides in Tyler, Smith County, Texas;

(13) Harve A. Thomas, who resides in Texarkana, Miller County, Arkansas;

(14) Henry Moore, III, who resides in Texarkana, Miller County, Arkansas;

each own or claim to own mineral or royalty interests in certain of the lands included in, covered and affected by (a) the Declaration of Unit (herein called the "Melton Unit") executed by The Atlantic Refining Company, dated June 30, 1961, and recorded in Volume 498, Page 389, Deed Records, Henderson County, Texas, (b) the Designation of Unit (herein called the "Emerson Unit") executed by Cities Service Petroleum Company and The Atlantic Refining Company, dated February 5, 1962, recorded in Volume 511, Page 105, Deed Records, Henderson County, Texas, and (c) the Unit Agreement, Fairway (James Lime) Unit, Henderson and Anderson Counties, Texas, (herein called the "Fairway Unit") dated as of October 1, 1963, recorded in Volume 580, Page 405, Deed Records, Henderson County, Texas.

(e) The Defendants named in Subparagraphs 1(b), 1(c) and 1(d) above are sued herein individually and as joint and several representatives of a class composed of all of the persons and entities who own or claim to own any interests of any character (including, by way of illustration and not limitation, interests in oil, gas and mineral leases, royalty interests and overriding royalty interests) in the mineral fee estate in the lands attempted to be included in the Melton Unit, the Emerson Unit and the Fairway Unit. The persons and entities who compose such class are so numerous (being in excess of 1,000 such persons and entities) as to make it impracticable to bring all of them before the Court. The character of the right sought to be enforced against the persons and entities comprising the class are joint, or, in the alternative, are several, and the objective of Plaintiffs' action is the adjudication of claims which do or may affect specific property involved in this action, or, in the further alternative, are several, and there is one or more common questions of law or fact affecting the several rights involved in this action, and common relief is sought herein by Plaintiffs against all of the persons and entities comprising said class. The Defendants named herein as representative of said class will fairly insure the adequate representation of all members of such class.

2.

(a) On August 6, 1961, Plaintiffs W. O. Hilton and wife, Malvirin Hilton, L. A. McCoy and wife Ila Mae McCoy, were, and now are, the owners in fee simple (except, however, certain outstanding royalty interests conveyed by

Plaintiffs to certain third parties who either are Defendants or are members of the class of which the Defendants are the representatives, the title to which royalty interests is not an issue in this action) and entitled to the possession of the mineral fee estate in the following described 82.713 acres of land in the Alfred Benge Survey, Abstract No. 57, Henderson County, Texas (herein called "the 82.713 acre tract"):

> BEGINNING at the Northeast corner of 57.978 acre tract standing in the name of Larkin Smith, et al;
>
> THENCE North 81 deg. 06.1 min. West 1216.21 feet with the North line of said Smith tract and the North line of the Clifford Emerson 40 acre tract to a point for corner;
>
> THENCE North 08 deg. 33.2 min. West to a point for corner in the North Boundary Line of said ALFRED BENGE SURVEY and also in the South Boundary Line of the JOHN RACHEL SURVEY, A-662, said point being in the middle of a public road;
>
> THENCE South 81 deg. 41.7 min. East along the North Boundary Line of said Benge Survey and the South Boundary Line of said Rachel Survey to a point for corner 2959.8 feet North 09 deg. 45.85 min. East of the place of beginning;
>
> THENCE South 09 deg. 45.85 min. West 2959.8 feet to the place of BEGINNING, and containing 82.713 acres of land, more or less;

subject only to the two valid and subsisting oil, gas and mineral leases executed by the Plaintiffs named above in this Paragraph 2(a), as Lessors, to the Plaintiff, Willis D. Moore, as Lessee, dated June 1, 1961, recorded in Volume 600, Pages 443 and 445, Deed Records, Henderson County,

Texas, which leases cover, in the aggregate, the 82.713 acre tract.

(b) On August 6, 1961, Plaintiff, Willis D. Moore, was and now is the owner and entitled to possession of the oil, gas and mineral leasehold estate in the 82.713 acre tract created by the oil, gas and mineral leases described in Paragraph 2(a) above.

(c) The Defendants afterward, on August 7, 1961, unlawfully entered upon and dispossessed Plaintiffs of Plaintiffs' said interests in the 82.713 acre tract and withhold from Plaintiffs the possession thereof.

(d) The reasonable value of the use and enjoyment of the said interests of Plaintiffs in the 82.713 acre tract daring Defendants' wrongful withholding of possession thereof is $250,000.00, which Defendants have refused to pay.

3.

Plaintiffs W. O. Hilton and wife, Malvirin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, as Lessors, executed to B. L. Garrett, as Lessee, an oil, gas and mineral lease covering the 82.713 acre tract (herein called "the Hilton-Garrett lease") dated August 5, 1951, recorded in Volume 373, Page 255, Deed Records, Henderson County, Texas, which lease was thereafter assigned to The Atlantic Richfield. Defendant Atlantic Richfield executed and recorded the Declaration of the Melton Unit (described in Paragraph 1(d)), wherein Defendant Atlantic Richfield purported to include 80 acres of the 82.713 acre tract in the Melton Unit for the production of oil, and Defendants

Atlantic Richfield and Cities Service executed and recorded the Designation of the Emerson Unit (Described in Paragraph 1(d)), wherein Defendants Atlantic Richfield and Cities Service purported to include the remaining 2.713 acres of the 82.713 acre tract in the Emerson Unit for the production of oil. Thereafter, Defendants Atlantic Richfield and Cities Service, executed said Unit Agreement, Fairway (James Lime) Unit, Henderson and Anderson Counties, Texas, whereby said Defendants purported to include the 82.713 acre tract in the Fairway Unit. No well has ever been drilled on and no production of oil, gas or other minerals has ever been obtained from the 82.713 acre tract.

4.

(a) The attempt of Defendant Atlantic Richfield to pool or combine 80 acres of the 82.713 acre tract covered by the Hilton-Garrett lease into the Melton Unit, containing 160 acres of land, for the production of oil, exceeded the power and authority granted by the pooling clause of the Hilton-Garrett lease, was a nullity, and was ineffective to extend the term of said lease beyond the terminal date of its primary term, August 5, 1961.

(b) The Hilton-Garrett lease terminated on August 5, 1961.

(c) The attempt of Defendants Atlantic Richfield and Cities Service thereafter to pool or combine 2.713 acres of the 82.713 acres of the Hilton-Garrett lease into the Emerson Unit, containing 160 acres, for the production of oil,

was ineffective and a nullity because said lease had terminated or, alternatively, because such attempt exceeded the power and authority granted by the pooling clause of the Hilton-Garrett lease.

(d) The attempt of said Defendants thereafter to include the Hilton-Garrett lease and the 82.713 acre tract covered thereby in the Fairway Unit was ineffective and was a nullity because the Hilton-Garrett lease had theretofore terminated or, alternatively, because such attempt exceeded the power and authority granted by the pooling clause of the Hilton-Garrett lease.

5.

Plaintiffs, but only upon the condition that the relief herein prayed for by Plaintiffs is granted, agree to ratify and confirm the Declaration of the Melton Unit, the Designation of the Emerson Unit and the Unit Agreement for the Fairway (James Lime) Field, all described in Paragraph 1(d) above.

WHEREFORE, Plaintiffs pray that the Defendants (other than Defendant Atlantic Richfield, which is presently before the Court) be cited to appear and answer this Second Amended Original Petition and that, on final hearing, Plaintiffs have judgment against all Defendants

(1) That the Hilton-Garrett lease terminated on August 5, 1961, the date of expiration of the primary term thereof;

(2) removing the cloud cast on Plaintiffs' titles by the Hilton-Garrett lease, the Declaration of the Melton Unit, the Designation of the Emerson Unit and the Unit Agreement, Fairway (James Lime) Unit, Henderson and Anderson Counties, Texas;

(3) for title to and possession of Plaintiffs' respective interests (described in Paragraphs 2(a) and 2(b) above) in the mineral fee estate in the 82.713 acres of land described in Paragraph 2(a), except the royalty interests conveyed by Plaintiffs to the third parties referred to in Paragraph 2(a) above; and

(4) for such other relief, legal or equitable, to which Plaintiffs may justly be entitled, together with all costs of suit.

KLIEWER AND HOOD

By /s/ EDWARD KLIEWER, JR.

Edward Kliewer, Jr.,
2210 Mercantile Bank Building,
Dallas, Texas 75201,
Attorneys for Plaintiffs.

APPENDIX N

Third Amended Answer of Defendant Atlantic Richfield Company After Remand To District Court of Henderson County, Texas.

(State District Court Transcript pps. 33-50)

(Number and title omitted) (Filed Sept. 26, 1967)

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes ATLANTIC RICHFIELD COMPANY, a corporation, heretofore known as The Atlantic Refining Company, and * * * (only the pertinent parts of this Answer are here shown. This Answer appears in full at pps. 33-50 of the Original Transcript from the state District Court filed in the state Court of Civil Appeals and as a part of the record herein).

1.

This Defendant specially excepts to Plaintiffs' said Petition for the reasons as follows: That in the trial of this case in the United States Court of Appeals for the Fifth Circuit, 327 F. (2) 217, in which W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, were Plaintiffs and this Defendant was the only Defendant, said Plaintiffs, W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, acting by and through their Attorney, Willis D. Moore, urged that all of the royalty owners were indispensable parties, and said Court held, that if this suit resulted in the Hilton et al Lease being declared invalid and removed from the

Unit, that the royalty owners would be denied their right to the oil and gas royalties being produced under said lease and that such constitutes them indispensable parties; and this Defendant further specially excepts to Plaintiffs' said Amended Petition for the reason that Plaintiffs by their said Petition have purported to sue certain Defendants as representatives of a class of the various kinds of royalty owners without making actual Defendants of all of the royalty owners under all the Units which Plaintiffs seek to remove as clouds cast on Plaintiffs' alleged title; that the determination of the validity of said Units referred to in Plaintiffs' said Petition will include as an incident thereto the determination of the right to have received royalties under same prior to as well as presently under the Field-wide Unitization Agreement; and that all of the royalty owners as well as all of the oil and gas leasehold owners under said Units are indispensable parties and in their absence the Court is without jurisdiction of which special exception this Defendant prays judgment of the Court.

(Paragraphs 2, 3, 4 and 5 are omitted)

6.

This Defendant alleges that Plaintiff ought not to recover for the reasons as follows: That while denominated a suit to remove cloud, the claim of Plaintiffs' suit under their Original and First Amended Petitions was that the Hilton-Garrett lease executed by them was invalid for lack of sufficient description of the land, and this was stipulated by Plaintiffs in Paragraph VI and by Exhibits "A" and

"B" attached to the below Pre-Trial Agreement; that in preparation for trial on Plaintiffs' First Amended Petition and while this suit was pending in the United States District Court for the Eastern District of Texas, on July 26, 1962, a Pre-Trial Order in writing was agreed to in open court and signed by Plaintiff Willis D. Moore as the then Attorney for the other Plaintiffs herein and also by the Attorneys for Defendant, Atlantic, and was entered and filed with the papers and as a part of the record in this case; and that said Pre-Trial Order and Agreement has now remained as such for a period of five (5) years.

That said Pre-Trial Order and Agreement also recited the execution of the Hilton-Garrett lease which provided that units pooled for oil shall not substantially exceed 40 acres provided that "should governmental authority having jurisdiction prescribe or permit the creation of units larger than those specified, units thereafter created may conform substantially in size with those prescribed by governmental regulations".

That by said Pre-Trial Order in Paragraph V(3) it was stipulated and agreed that "the Railroad Commission, Oil and Gas Division, of the State of Texas, on March 4, 1961, promulgated on its Oil and Gas Docket No. 120 its Order No. 6-45,322 adopting rules and regulations for the Fairway (James Lime) Field in Anderson and Henderson Counties, Texas, whereby pooled units for oil were provided for as 80 acres plus a tolerance of 80 acres, making a pooled unit for oil of not more than 160 acres as shown by said Exhibits

below. That on June 12, 1961, the Railroad Commission of Texas entered its Order effective July 1, 1961, merging the West Fairway (James Lime) Field and the West Frankston (James Lime) Field into the Fairway (James Lime) Field, including the adoption of the Fairway Field rules providing for 80 acres proration units plus 80 acres tolerance and not to exceed 160 acres for each oil unit as shown by the below Exhibits and which area includes the land here in controversy".

That said Stipulation under said Pre-Trial Order was the agreement of said parties that they construed said Railroad Commission Order to provide for 160 acre units; that the purpose and meaning was that Plaintiffs agreed, that subject to their claim of lack of sufficient lease description, that in applying the provisions of the Railroad Commission Order to the pooling provisions of the Hilton-Garrett lease, that same provided for units of 160 acres, and to eliminate any contested issue of law or fact in regard to same.

That said Stipulation has now stood as a part of the record in this suit for over five (5) years; that Plaintiffs in Paragraph 3 of their Fourth Amended Petition have now abandoned their claim that said lease was invalid for lack of sufficient description and have alleged that said Hilton-Garrett lease covered the 82.713 acre tract in controversy; and by reason of all of the above Plaintiffs should now be held to be estopped from claiming against this Defendant

that said Railroad Commission Order provided for a different rule, which if applied, would mean that this Defendant had agreed in said Pre-Trial Order that under its lease and said Railroad Commission Order it had no authority to pool to the extent of 160 acre units, and for the reason that such an agreement would have meant this Defendant had agreed that it has exceeded its power to pool to the extent of 160 acres and that this Defendant's lease had terminated regardless of whether or not there was a lack of sufficient lease description.

7.

This Defendant alleges further that Plaintiffs ought not to recover for the reasons as follows: That in addition to the matters alleged in the foregoing Paragraph No. 6 of this Answer, that said Pre-Trial Order and Agreement of July 26, 1962, recited the execution of the Declaration of Unit for the Atlantic-Melton Unit dated and filed June 30, 1961, in Volume 498, Page 389 of the Deed Records of Henderson County, Texas, copies of which were attached as Plaintiffs' Exhibit No. (2) and this Defendant's Exhibit No. (35); that said Declaration of Unit recited the execution of the Hilton-Garrett lease and the Melton-Garrett lease, and recited the construction placed on same that said leases granted the right to pool "to form units of the size permitted or prescribed by the Railroad Commission", and further recited the construction placed on same that "by Order No.

6-45,322 dated March 14, 1961, the Railroad Commission of Texas adopted rules providing for 160 acre spacing for production of oil from the James Lime Field"; that said Unit Declaration then declared that said leases were pooled to form the 160 acre unit therein described.

That by said Pre-Trial Order in Paragraph V(5) it was stipulated and agreed that "on June 30, 1961; The Atlantic Refining Company, reciting itself to be the owner of the above J. W. Melton lease and the W. O. Hilton, et al lease and reciting its pooling powers under said leases and the above Orders of the Railroad Commission, made the Declaration of Unit which was filed on June 30, 1961, in Volume 498, Page 389, of the Henderson County Deed Records, whereby a 160 acre unit was formed for the production of oil from the James Lime Formation and whereby there was pooled and combined exactly 80 acres from the J. W. Melton lease and exactly 80 acres from the W. O. Hilton, et al lease, making the total of 160 acres and including what The Atlantic Refining Company claims to be all of the W. O. Hilton, et al land except a 2.713 acre area out of the Southwest portion of said land; that said 2.713 acre area belonging to Plaintiffs and claimed by Defendant under its said lease has been pooled as a part of the Cities Service Oil Company 160 acre Oil Unit adjoining on the South".

That said Stipulation under said Pre-Trial Order was the agreement of said parties that subject to Plaintiffs' claim of lack of sufficient lease description by reasons of which Plaintiffs claimed Defendant Atlantic owned no lease on the

Hilton Tract, that this Defendant had formed by said Unit Declaration a valid unit of 160 acres; that said Stipulation was made to evidence the agreement that said Unit Declaration was valid, and that Plaintiffs made no contest either of law or of fact as to the validity of said Unit, if Plaintiffs' cause of action failed as to the claims of lack of sufficient lease description; that said Stipulation has now stood as a part of the record in this suit for over five (5) years; that Plaintiffs in Paragraph 3 of their Fourth Amended Petition have now abandoned their claim that said lease was invalid for lack of sufficient description and have now alleged that said Hilton-Garrett lease covered the 82.713 acre tract in controversy; that by reason of all of the above Plaintiffs should now be held to be estopped from claiming against this Defendant that said Declaration of Unit was not effective to have pooled to the extent of 160 acres including that portion of the Hilton Tract included in same.

8.

This Defendant alleges further that Plaintiffs ought not to recover for the reasons as follows: That in addition to the matters alleged in the foregoing Paragraphs No. 6 and 7 of this Answer, that by said Pre-Trial Order and Agreement of July 26, 1962, in Paragraph No. VI of same it was stipulated and agreed that the only contested issues of law and fact were those attached as Exhibits "A" and "B" which related only to whether the Hilton-Garrett lease was invalid for lack of sufficient description of the land, and that

this was the ultimate contested issue of law; that said Stipulation was made to evidence the agreement of the parties that no contest existed as to any other issues either of law or of fact; that this Defendant had the right to rely on same and to believe that if Plaintiffs could not recover on Plaintiffs' claim that the lease was invalid for lack of sufficient description, that then this Defendant was entitled to judgment; that this Defendant did rely on and believe said agreement to be in all respects binding on the parties, and this Defendant as the owner of the Well on the Melton Tract and the owner of the Hilton-Garrett lease, and acting under said Declaration Unit, and acting under the provisions for the payment of royalty under said Hilton-Garrett lease and the conveyances below referred by Plaintiffs of royalties thereunder, produced said Well and paid royalties to Plaintiffs' grantees for a period of over 4½ years after the making of said agreement and prior to the filing of Plaintiffs' Second Amended Petition herein on April 20, 1967; that in said Amended Petition and subsequent Amended Petitions Plaintiffs have alleged that the Hilton-Garrett lease did cover Plaintiffs' land, and claimed for the first time that this Defendant exceeded the extent of its authority to pool under said lease; that the above Stipulation, together with the other Stipulations above have now stood as a part of the record in this suit for over five (5) years; that to permit Plaintiffs to now retract their agreements would be to the great damage and injury of this Defendant;

and that by reason of all of the above Plaintiffs should now be held to be estopped from making such claim or any recovery herein as sought in Plaintiffs' amended pleadings; that that since Plaintiffs now admit by their allegations that the description in their Hilton-Garrett lease did cover the land in controversy this Defendant should be awarded judgment.

9.

This Defendant alleges further that Plaintiffs ought not to recover for the reasons as follows: That Plaintiffs knew or were charged with notice of the contents of the Hilton-Garrett lease including the pooling provisions hereinabove quoted; that Plaintiffs knew or were charged with notice of the contents of the Railroad Commission Order No. 6-45,322 dated March 4, 1961, adopting Rules and Regulations for the Fairway (James Lime) Field and Railroad Commission Order dated June 12, 1961, making said Rules and Regulations applicable to the West Fairway (James Lime) Field including the Hilton Tract, and including the provisions hereinabove quoted; that Plaintiffs knew and were charged with notice of the provisions of the Declaration of Unit for the Atlantic-Melton Unit about which they are now complaining including the provisions hereinabove quoted; that notwithstanding same Plaintiffs asserted as their only cause of action for the removal of said unit declaration as a cloud on their title, that said Hilton-Garrett lease was invalid

for lack of sufficient description of the land, and that as a result of same it was claimed this Defendant owned no oil and gas lease covering Plaintiffs' land and, therefore, had no right to pool, and thereby, had clouded Plaintiffs' title on June 30, 1961, by the filing of said Unit Declaration; that acting further in pursuance to the foregoing Plaintiffs by their said Attorney in open court entered into and agreed to the above quoted Pre-Trial Order and Agreement; that the foregoing amounted to a holding out to or representation to the Defendant that, if Plaintiffs' claim that the Hilton-Garrett lease was invalid for lack of sufficient description was without merit, that then this Defendant owned a valid lease and had effectively pooled the land, and that Plaintiffs asserted no other ground for recovery; that by reason of the above Plaintiffs were under the duty to speak and to assert any claim they had as to this Defendant exceeding the extent of its authority to act under the pooling provisions of said lease; that this Plaintiffs failed to do until the filing of their Second Amended Petition on April 20, 1967, over five (5) years later; that this Defendant relying on Plaintiffs' representations and agreements above, and believing that Plaintiffs' claim as to the lease being invalid for lack of sufficient description, to be without merit, this Defendant improved and operated the property and paid royalty to Plaintiffs' grantees for a period of over five (5) years before Plaintiffs filed their Second Amended Petition alleging for the first time that the Hilton-Garrett lease covered the land in controversy, but that this Defendant had exceeded the extent of its authority to pool under same; that to allow

Plaintiffs to now assert that this Defendant exceeded the extent of its authority to pool under the Hilton-Garrett lease would be to the great damage and injury of this Defendant; and that by reason of all of the above, Plaintiffs should now be held to be estopped from making such claim or any recovery herein as sought in Plaintiffs' amended pleadings; and that since Plaintiffs now admit by their allegations that the description in their Hilton-Garrett lease did cover the land in controversy this Defendent should be awarded judgment.

(Paragraphs 10, 11, 12 and 13 are omitted)

WHEREFORE this Defendant prays that Plaintiffs take nothing by this suit and that judgment be rendered in favor of this Defendant and that it recover its costs of suit and that it have such other and further relief to which it may show itself entitled to.

RAMEY, BRELSFORD, FLOCK & DEVEREUX,

By /s/ TOM B. RAMEY, JR.

By /s/ FRANK L. McCLENDON

Citizens First National Bank Bldg.,
P. O. Box 629,
Tyler, Texas 75701,
Attorneys for Defendant, Atlantic Richfield Company.

APPENDIX O

Defendants J. W. Melton And Wife Virgie Melton First Amended Answer

(State District Court Transcript pps. 51-61)

(Number and title omitted) (Filed Sept. 26, 1967)

TO THE HONORABLE JUDGE OF SAID COURT:

Now come J. W. MELTON and wife, VIRGIE MELTON, who were first made Defendants in Plaintiffs' Second Amended Petition filed herein on April 20, 1967, and now in answer to Plaintiffs' Fourth Amended Petition file this their First Amended Original Answer and respectfully show the Court as follows:

(Paragraph No. 1 is same as No. 1 in Atlantic's Third Amended Answer and Paragraphs 2. - 7. are omitted)

8.

These Defendants further in behalf of their defense against Plaintiffs' suit adopt by reference and as their own the Answer and defenses filed herein in behalf of Defendant Atlantic Richfield Company.

WHEREFORE these Defendants pray that Plaintiffs take nothing by this suit and that judgment be rendered in favor of these Defendants and that they recover their costs of suit and that they have such other and further relief to which they may show themselves entitled to.

(ATTORNEYS SIGNATURES OMITTED)

APPENDIX P

Defendant C. L. Hanna First Amended Answer

(State District Court Transcript pps. 62-72)

(Number and title omitted) (Filed Sept. 26, 1967)

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes C. L. HANNA, one of the Defendants in Plaintiffs' Fourth Amended Original Petition filed herein on June 29, 1967, in the above entitled and numbered cause and in answer to Plaintiffs' said Petition files this his First Amended Original Answer and respectfully shows the Court as follows:

(Paragraph No. 1 is same as No. 1 in Atlantic's Third Amended Answer and Paragraphs 2.-8. are omitted.)

9.

This Defendant further in behalf of his defense against Plaintiffs' suit adopts by reference and as his own the Answer and defenses filed herein behalf of Defendant Atlantic Richfield Company.

WHEREFORE this Defendant prays that Plaintiffs take nothing by this suit and that judgment be rendered in favor of this Defendant and that he recover his costs of suit and that he have such other and further relief to which he may show himself entitled to.

(ATTORNEYS SIGNATURES OMITTED)

APPENDIX Q

Defendant Frances Walker McCain First Amended Answer

(State District Court Transcript pps. 73-83)

(Number and title omitted) (Filed Sept. 26, 1967)

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes FRANCES WALKER MCCAIN, who was first made a Defendant in Plaintiffs' Second Amended Petition filed herein on April 20, 1967, and now in answer to Plaintiffs' Fourth Amended Petition files this her First Amended Original Answer and respectfully shows the Court as follows:

(Paragraph No. 1 is same as No. 1 in Atlantic's Third Amended Answer and Paragraphs 2. - 8. are omitted.)

9.

This Defendant further in behalf of her defense against Plaintiffs' suit adopts by reference and as her own the Answer and defenses filed herein in behalf of Defendant Atlantic Richfield Company.

WHEREFORE this Defendant prays that Plaintiffs take nothing by this suit and that judgment be rendered in favor of this Defendant and that she recover her costs of suit and that she have such other and further relief to which she may show herself entitled to.

(ATTORNEYS SIGNATURES OMITTED)

APPENDIX R

Defendant Edson Petroleum Company First Amended Answer

(State District Court Transcript pps. 84-94)

(Number and title omitted) (Filed Sept. 26, 1967)

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes EDSON PETROLEUM COMPANY, a corporation, who was first made a Defendant in Plaintiffs' Second Amended Petition filed herein on April 20, 1967, and now in answer to Plaintiffs' Fourth Amended Petition files this its First Amended Original Answer and respectfully shows the Court as follows:

(Paragraph No. 1 is same as No. 1 in Atlantic's Third Amended Answer and Paragraphs 2. - 8. are omitted.)

9.

This Defendant further in behalf of its defense against Plaintiffs' suit adopts by reference and as its own the Answer and defenses filed herein in behalf of Defendant Atlantic Richfield Company.

WHEREFORE this Defendant prays that Plaintiffs take nothing by this suit and that judgment be rendered in favor of this Defendant and that it recover its costs of suit and that it have such other and further relief to which it may show itself entitled to.

(ATTORNEYS SIGNATURES OMITTED)

APPENDIX S

Defendants Southeastern Public Service Company, Domino Corporation, William G. Webb, Trustee For Empire Trust Company and Empire Trust Company First Amended Answer

(State District Court Transcript pps. 95-105)

(Number and title omitted) (Filed Sept. 26, 1967)

TO THE HONORABLE JUDGE OF SAID COURT:

Now Come SOUTHEASTERN PUBLIC SERVICE COMPANY, a corporation, DOMINO CORPORATION, WILLIAM G. WEBB, Trustee for Empire Trust Company, and EMPIRE TRUST COMPANY, a banking corporation, who were first made Defendants in Plaintiffs' Fourth Amended Petition filed herein on June 29, 1967, and now in answer to Plaintiffs' Fourth Amended Petition file this their First Amended Original Answer and respectfully show the Court as follows:

(Paragraph No. 1 is same as No. 1 in Atlantic's Third Amended Answer and Paragraphs 2. - 8. are omitted.)

9.

These Defendants further in behalf of their defense against Plaintiffs' suit adopt by reference and as their own the Answer and defenses filed herein in behalf of Defendant Atlantic Richfield Company.

WHEREFORE these Defendants pray that Plaintiffs take nothing by this suit and that judgment be rendered in favor of these Defendants and that they recover their costs of suit and that they have such other and further relief to which they may show themselves entitled to.

(ATTORNEYS SIGNATURES OMITTED)

APPENDIX T

Defendants E. Fred Herschbach, Frederick J. Herschbach and Robert A. Herschbach, First Amended Answer

(State District Court Transcript pps. 106-116)

(Number and title omitted) (Filed Sept. 26, 1967)

To the Honorable Judge of Said Court:

Now Come E. Fred Herschbach, Frederick J. Herschbach and Robert A. Herschbach, who were first made Defendants in Plaintiffs' Fourth Amended Petition filed herein on June 29, 1967, and now in answer to Plaintiffs' said Petition file this their First Amended Original Answer and respectfully show the Court as follows:

(Paragraph No. 1 is same as No. 1 in Atlantic's Third Amended Answer and Paragraphs 2. - 8. are omitted.)

9.

These Defendants further in behalf of their defense against Plaintiffs' suit adopt by reference and as their own the Answer and defenses filed herein in behalf of Defendant Atlantic Richfield Company.

Wherefore these Defendants pray that Plaintiffs take nothing by this suit and that judgment be rendered in favor of these Defendants and that they recover their costs of suit and that they have such other and further relief to which they may show themselves entitled to.

(Attorneys Signatures Omitted)

APPENDIX U

Motion For Summary Judgment Of Atlantic Richfield Company In District Court Of Henderson County, Texas

(Original Motion sent up as part of the record.)

(Number and title omitted) (Filed Sept. 26, 1967)

To the Honorable Judge of Said Court:

NOW COMES Defendant Atlantic Richfield Company and pursuant to Rule 166-A files this its Motion for Summary Judgment against the Plaintiffs and respectfully shows the Court as follows:

1.

(Omitted)

2.

That by reason of the pleadings herein, the depositions, the admissions on file, the attached affidavits, and the other matters hereinafter set out, this Defendant shows that there is no genuine issue as to any material fact as to the defenses below of this Defendant and that this Defendant is entitled to judgment as a matter of law by reason of its defenses alleged in its Third Amended Answer as follows:

(1) (Omitted)

(2) Under Paragraph No. 6 of its Answer this Defendant's defense is that subject to Plaintiffs' claims that the Hilton-Garrett lease was invalid for lack of sufficient description of the land, that by Pre-Trial Order and Agreement made in

open court on July 26, 1962, by Plaintiffs and this Defendant, that Plaintiffs agreed that the Railroad Commission Order No. 6-45,322, dated March 4, 1961, was construed by the parties as providing for units for oil of 80 acres plus a tolerance of 80 acres, making 160 acres, and that Plaintiffs by reason of said agreement are now estopped to claim said Railroad Commission Order provided otherwise and are estopped to claim that this Defendant exceeded the extent of the authority granted by the pooling clause of said Hilton-Garrett lease; and that since Plaintiffs have now alleged in their Amended Petition that the Hilton-Garrett lease did cover the W. O. Hilton, et al. 82.713 acre tract, this Defendant is entitled to judgment; and

(3) Under Paragraph No. 7 of its Answer this Defendant's defense is that, subject to Plaintiffs' claim that the Hilton-Garrett lease was invalid for lack of sufficient description of the land, that by Pre-Trial Order and Agreement made in open court on July 26, 1962, by Plaintiffs and this Defendant that Plaintiffs agreed that by the Declaration of Unit for the Atlantic-Melton Unit dated and filed June 30, 1961, in Volume 498, Page 389 of the Deed Records of Henderson County, Texas, there was pooled 80 acres of the J. W. Melton lease and 80 acres of the W. O. Hilton, et al lease, making 160 acres, which was the unit known as the Atlantic-Melton Unit, and that the 2.713 acres constituting the balance of the W. O. Hilton, et al 82.713 acre tract and claimed by this Defendant was pooled as a part of the Cities Service-Emerson Unit; that Plaintiffs by reason of said agreement are now estopped to claim that said Hilton-Garrett lease

was not pooled as above and are estopped to claim that this Defendant exceeded the extent of the authority granted by the pooling clause of said Hilton-Garrett lease; and since Plaintiffs have now alleged in their Amended Petition that the Hilton-Garrett lease did cover the W. O. Hilton, et al 82.713 acre tract, this Defendant is entitled to judgment; and

(4) Under Paragraph No. 8 of its Answer this Defendant's defense is that, subject to Plaintiffs' claim that the Hilton-Garrett lease was invalid for lack of sufficient description of the land, that by Pre-Trial Order and Agreement made in open court on July 26, 1962, by Plaintiffs and this Defendant, that Plaintiffs agreed that the only contested issues of law and fact were those which related to whether the Hilton-Garrett lease was invalid for lack of sufficient description of the land; that Plaintiffs have now in their Amended Petition alleged that the Hilton-Garrett lease did cover the W. O. Hilton, et al 82.713 acre tract; that Plaintiffs by reason of said agreement and their allegation that said lease did cover said tract are now estopped to claim that any other issues, either of law or of fact, exist between the parties other than issues relating to whether the Hilton-Garrett lease was invalid for lack of sufficient description.

(Paragraphs 3. - 5. including references to Exhibits are omitted.)

WHEREFORE this Defendant prays that the Court grant and enter in its favor a summary judgment in accordance with the foregoing and that the Court decree and adjudge that the Plaintiffs take nothing by reason of their suit against this Defendant, and that this Defendant recover its costs,

and for such other and further relief, both general and special, as the Court may deem it to be entitled to, and that if judgment is not so granted that the Court order that the case shall proceed to a regular trial on the defenses alleged herein and in this Defendant's Third Amended Answer filed herein.

RAMEY, BRELSFORD,
FLOCK & DEVEREUX,

By /s/ TOM B. RAMEY, JR.

By /s/ FRANK L. McCLENDON

Citizens First National Bank
Bldg.,
P. O. Box 629,
Tyler, Texas 75701,
Attorneys for Defendants,
Atlantic Richfield Company.

(AFFIDAVIT OMITTED)

APPENDIX V

Motion For Summary Judgment By John W. Melton, Et Al, Filed In the District Court Of Henderson County, Texas

(Original Motion sent up as part of the record.)

(Number and title omitted) (Filed Sept. 26, 1967)

TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes Defendants, John W. Melton and wife, Virgie Melton, C. L. Hanna, Frances Walker McCain, Edson Petroleum Company, Southeastern Public Service Company, Domino Corporation, William G. Webb, Trustee for Empire Trust Company, Empire Trust Company, E. Fred Herschbach, Frederick J. Herschbach, and Robert A. Herschbach, and pursuant to Rule 166-A file this their Motion for Summary Judgment against Plaintiffs and respectfully show the Court as follows:

1.

(Omitted)

2.

These Defendants hereby join in and adopt as their own the same as if they were named therein the Motion for Summary Judgment together with the Exhibits attached, which has been filed herein in behalf of Defendant, Atlantic Richfield Company.

(Paragraphs 3. - 6. including Exhibits are omitted.)

Wherefore these Defendants pray that the Court grant and enter in their favor a summary judgment in accordance

with the foregoing and that the Court decree and adjudge that the Plaintiffs take nothing by reason of their suit against these Defendants, and that these Defendants recover their costs, and for such other and further relief, both general and special, as the Court may deem them to be entitled to, and if judgment is not so granted that the Court order that the case shall proceed to a regular trial on the defenses alleged herein and in these Defendants' Amended Answers filed herein.

RAMEY, BRELSFORD,
FLOCK & DEVEREUX,

By /s/ TOM B. RAMEY, JR.

By /s/ FRANK L. McCLENDON

Citizens First National Bank
Bldg.,
P. O. Box 629,
Tyler, Texas 75701,
Attorneys for Defendants.

(AFFIDAVIT OMITTED)

APPENDIX W

Judgment Entered By District Court of Henderson County, Texas After Remand

(State District Court Transcript pps. 124-128)

(Number and title omitted) (Filed April 2, 1968)

On the 6th day of October, 1967, came on to be heard the Motion, filed in this Cause by all Plaintiffs herein, for entry of a Summary Judgment in Plaintiffs' favor against all Defendants in this Cause, and also came on to be heard the Motions for entry of Summary Judgment against Plaintiffs filed in this Cause by the Defendants, Atlantic Richfield Company, John W. Melton and wife, Virgie Melton, C. L. Hanna, Frances Walker McCain, Edson Petroleum Company, Southeastern Public Service Company, Domino Corporation, William G. Webb, Trustee for Empire Trust Company, Empire Trust Company, E. Fred Herschbach, Frederick J. Herschbach, Robert A. Herschbach, and Centenary College of Shreveport, Louisiana; and it appearing to the Court that all Defendants named individually and as representatives of a class in this Cause have been duly and timely served with process and (with the exception of C. S. McCain, Jr., and J. L. Wilcox who, having disclaimed any interest in the subject matter of this action, are hereby dismissed as Defendants herein) are presently before the Court; that the Court has jurisdiction of the subject matter of and of all parties to this suit; that Plaintiffs' Motion for Summary Judgment and the Motions for Sum-

mary Judgment filed by the above-named Defendants are each made in proper form and time; that proper service thereof has been made upon all parties, and the Court having considered the pleadings, depositions and admissions on file, together with the supporting affidavits filed by the respective Movants, and finding that the same show that there is no genuine issue as to any material fact, that Plaintiffs are entitled to judgment as a matter of law against all Defendants (except those who, having disclaimed, have been dismissed) and that as a matter of law the Motions for Summary Judgment filed by the above-named Defendants should be denied;

It is therefore ORDERED, ADJUDGED and DECREED that W. O. Hilton and wife, Malvrin Hilton, L. A. McCoy and wife Ila Mae McCoy, and Willis D. Moore, Plaintiffs herein, do have and recover, and there is hereby rendered in favor of said Plaintiffs, against Atlantic Richfield Company, Cities Service Oil Company, Fred M. Garrett, Edson Petroleum Company, H. P. Riley, James A. Latham, Elise M. Young, Cornelia McCain, Frances Walker McCain, Herbert Wilcox, J. W. Melton and wife, Virgie Melton, C. E. Willingham, Harve A. Thomas, Henry Moore, III, Commercial Investment Company, John D. Janicek, Bettye V. Gray, Centenary College of Shreveport, Caddo Parish, Louisiana, W. S. Day, Southeastern Public Service Company, Domino Corporation, William G. Webb, Trustee for Empire Trust Company, Empire Trust Company, Ralph E. Graham, E. Fred Herschbach, Frederick J. Herschbach, Robert A. Herschbach, and C. L.

Hanna, the Defendants herein, each individually and as joint and several representatives of each and all classes composed of all of the persons and entities who own or claim to own any interests of any character in the mineral fee estate in the lands attempted to be included in the Melton Unit, the Emerson Unit and the Fairway Unit (such Units being particularly described below), judgment as follows:

(1) that the oil, gas and mineral lease dated August 5, 1951, executed by W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, as Lessor, to B. L. Garrett, as Lessee, recorded in Volume 373, Page 255, Deed Records, Henderson County, Texas (the "Hilton-Garrett lease"), covering the 82.713 acre tract of land described in (3) below, terminated on August 5, 1961, the date of expiration of the primary term thereof;

(2) that the cloud cast on Plaintiffs' titles to the 82.713 acre tract described in (3) below by the Hilton-Garrett lease, by the Declaration of Unit (the "Melton Unit") executed by The Atlantic Refining Company, dated June 30, 1961, recorded in Volume 498, Page 389, Deed Records, Henderson County, Texas, by the Designation of Unit (the "Emerson Unit") executed by Cities Services Petroleum Company and The Atlantic Refining Company, dated February 5, 1962, recorded in Volume 511, Page 105, Deed Records, Henderson County, Texas, and by the Unit Agreement, Fairway (James Lime) Unit, Henderson and Anderson Coun-

ties, Texas (the "Fairway Unit") dated as of October 1, 1963, recorded in Volume 580, Page 405, Deed Records, Henderson County, Texas, shall be and said cloud is hereby removed;

(3) that Plaintiffs W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, recover of and from Defendants herein the title and possession of the mineral fee estate in the following described 82.713 acres of land located in the Alfred Benge Survey, Abstract No. 57, Henderson County, Texas:

BEGINNING at the Northeast corner of 57.978 acre tract standing in the name of Larkin Smith, et al.;

THENCE North 81 deg. 06.1 min. West 1216.21 feet with the North line of said Smith tract and the North line of the Clifford Emerson 40 acre tract to a point for corner;

THENCE North 08 deg. 33.2 min. West to a point for corner in the North Boundary line of said ALFRED BENGE SURVEY and also in the South Boundary Line of the JOHN RACHEL SURVEY, A-622, said point being in the middle of a public road;

THENCE South 81 deg. 41.7 min. East along the North Boundary Line of said Benge Survey and the South Boundary Line of said Rachel Survey to a point for corner 2959.8 feet North 09 deg. 45.85 min. East of the place of beginning;

THENCE South 0 deg. 45.85 min. West 2959.8 feet to the place of BEGINNING, and containing 82.713 acres of land, more or less;

(except, however, the royalty interests in said land heretofore conveyed to others by Plaintiffs, W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, which royalty interests are not in issue in this action), subject only to the two oil, gas and mineral leases described below in this (3); and that Plaintiff, Willis D. Moore, recover from Defendants herein the title and possession of the oil, gas and mineral leasehold estate in said 82.713 acre tract created by the two oil, gas and mineral leases executed by the other Plaintiffs herein to Willis D. Moore, each dated June 1, 1961, recorded, respectively, in Volume 600, Pages 443 and 445, Deed Records, Henderson County, Texas; and

(4) for all costs of suit, which are taxed solely against the Defendant, Atlantic Richfield Company.

And it is FURTHER ORDERED, ADJUDGED and DECREED that the Motions for Summary Judgment filed herein by Defendant shall be and the same are hereby denied and overruled, as well as the special exceptions contained in the various answers of the Defendants.

To which action of the Court all of the Defendants, in open court, excepted and gave notice of appeal to the Court of Civil Appeals for the Twelfth Supreme Judicial District of Texas, at Tyler, Texas.

Rendered and signed this 2nd day of April, 1968.

/s/ R. W. LAWRENCE

District Judge

APPENDIX X

Points Of Error Nos. 1, 2, 3 and 7 Made In Brief Of Atlantic Richfield Company Filed In The Court Of Civil Appeals, 12th Supreme Judicial District Of Texas.

(Original brief sent up as part of record from state Court of Civil Appeals for purpose of showing said points.)

(Number and title omitted) (Filed June 28, 1968)

To the Honorable Court of Civil Appeals:

Now comes Atlantic Richfield Company formerly known as The Atlantic Refining Company, one of the Appellants, and by this appeal shows that the Trial Court erred in granting Appellees W. O. Hilton, et al's Motion for Summary Judgment and in denying Appellant Atlantic's Motion for Summary Judgment and that this case should be reversed and rendered in favor of Appellants or else remanded to the Trial Court, by reason of the following:

ATLANTIC RICHFIELD COMPANY'S POINTS OF ERROR

Point of Error No. 1

The trial court erred in refusing to hold the stipulations made in federal court were an agreed construction that the Railroad Commission orders provided for 160 acre units and operated under the Hilton-Atlantic lease as an agreement said lease authorized 160 acre units and as such and under the judgment remanding the case estopped appellees from asserting Atlantic exceeded the authority granted by the pooling clause in said lease, and additionally Appellees waived said right.

Point of Error No. 2

The trial court erred in refusing to hold the stipulations made in federal court were an agreement the unit declaration by Atlantic pooled 80 acres from the Melton tract and 80 acres from the Hilton tract making 160 acres, and operated as a ratification of the unit and as such and under the judgment remanding the case estopped Appellees from asserting Atlantic exceeded the pooling powers in the Hilton-Atlantic lease, and additionally Appellees waived said right.

Point of Error No. 3

The trial court erred in refusing to hold the stipulations made in federal court were an agreement that the only contested issues in the case were those relating to whether the Hilton-Atlantic lease was invalid for lack of sufficient lease description, and said stipulations never having been set aside operated as an agreement Appellees had no other claim against Atlantic, and as such and under the judgment remanding the case estopped Appellees from asserting Atlantic exceeded the pooling powers in the Hilton-Atlantic lease, and additionally Appellees waived said right.

Points of Error Nos. 4, 5 and 6

(Omitted)

Point of Error No. 7

The trial court erred in refusing to hold that under the judgment remanding the case to make parties, Appellees were required to make the royalty owners defendants as real parties at interest, and having made them only nominal parties defendant as to whose title it was alleged there was

no issue, and by having sued some by a class action only, Appellees were not entitled to judgment.

(Remainder of Brief omitted)

Respectfully submitted,

RAMEY, BRELSFORD, FLOCK,
DEVEREUX & HUTCHINS,
TOM B. RAMEY, JR.,
FRANK L. McCLENDON,

By /s/ FRANK L. McCLENDON

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Bank Bldg.,
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Attorneys for Appellant,
Atlantic Richfield Company.

APPENDIX Y

Adoption By John W. Melton, Et Al Of Points Of Error Nos. 1, 2, 3 And 7 Made By Atlantic Richfield Company In Brief Filed In Court Of Civil Appeals, 12th Supreme Judicial District Of Texas.

(Original Brief Adopting Said Points Of Error Sent Up As Part Of Record From Said Court Of Civil Appeals For Purpose Of Showing Adoption Of Said Points Of Error.)

(Number and title omitted) (Filed June 28, 1968)

TO THE HONORABLE COURT OF CIVIL APPEALS:

Now Come Appellants, John W. Melton and wife, Virgie Melton, C. L. Hanna, Frances Walker McCain, Edson Petroleum Company, Southeastern Public Service Company, Domino Corporation, William G. Webb, Trustee for Empire Trust Company, Empire Trust Company, E. Fred Herschbach, Frederick J. Herschbach and Robert A. Herschbach. and by this appeal show that the Trial Court erred in granting Appellees, W. O. Hilton's, et al's Motion for Summary Judgment and in denying these Appellants Motion for Summary Judgment, and that this case should be reversed and rendered in favor of Appellants, or else remanded to the Trial Court by reason of the following:

These Appellants are royalty owners and hereby join in and adopt as their own the same as if they were named

therein the Brief of Appellant, Atlantic Richfield Company, filed herein in support of its appeal.

(Remainder of this brief omitted)

Respectfully submitted,

RAMEY, BRELSFORD, FLOCK,
DEVEREUX & HUTCHINS,
TOM B. RAMEY, JR.,
FRANK L. MCCLENDON,

By /s/ FRANK L. MCCLENDON

Citizens First National
Bank Bldg.,
P. O. Box 629,
Tyler, Texas 75701,
Attorneys for said Appellants.

APPENDIX Z

Motion For Rehearing Of Appellant Atlantic Richfield Company Filed In The Court Of Civil Appeals, 12th Supreme Judicial District Of Texas

(Original Sent Up As Part Of Record From State Court Of Civil Appeals)

(Number and title omitted) (Filed Feb. 12, 1969)

To the Honorable Court of Civil Appeals:

Now comes Appellant, Atlantic Richfield Company, and respectfully moves the Court to set aside the Judgment of this Court rendered on January 30, 1969 affirming the Trial Court's Judgment in granting Appellees' Motion for Summary Judgment and in refusing to reverse and render judgment in favor of Appellant that Appellant's Motion for Summary Judgment be granted, and refusing in the alternative to reverse and remand this case to the Trial Court, and Appellant moves this Court to grant it a rehearing and upon rehearing to reverse and render judgment in favor of Appellant or else remand this case to the Trial Court, and in this connection Appellant asserts that this Court erred in overruling each of Appellant's Points of Error as below set forth, and that this Court erred in each of the holdings of this Court as set forth below, and respectfully shows the Court as follows:

POINT OF ERROR NO. 1

This Court erred in affirming the judgment of the Trial Court in holding that the Stipulation made long before the holding in Jones v. Killingsworth and without regard to whether part of the acreage was prescribed and part per-

mitted and whereby it was agreed that the Railroad Commission Orders adopted regulations whereby pooled units for oil were provided for of 160 acres, did not operate under the Hilton-Atlantic lease as an estoppel against Appellees thereafter asserting Appellant exceeded the extent of the authority granted by the pooling clause in said lease.

POINT OF ERROR NO. 2

This Court erred in affirming the judgment of the Trial Court in holding the Stipulation made long before the holding in Jones v. Killingsworth wherein it was agreed that the Railroad Commission Orders adopted regulations whereby pooled units for oil were provided for of 160 acres, involved a question of law and that the parties could not agree that they so construed said Orders or that said Stipulation applied to the Hilton-Atlantic lease pooling provisions operated as an agreement said lease authorized pooled units of 160 acres so as to estop Appellees from thereafter asserting Appellant exceeded the extent of the authority granted by the pooling clause in said lease.

POINT OF ERROR NO. 3

This Court erred in affirming the judgment of the Trial Court in holding that the Stipulation made, subject to Appellees' claim the lease description was insufficient, that the Declaration of Unit for the Atlantic-Melton 160 acre Unit was filed whereby a 160 acre unit was formed pooling exactly 80 acres from the Melton Lease and exactly 80 acres from the Hilton Lease and stipulating the remaining 2.713 acres of the Hilton Tract has been pooled as a part of the Cities Service Oil Company 160 acre Unit, did not operate under the Hilton-Atlantic lease as an estoppel against Appellees thereafter asserting Appellant exceeded the extent of the authority granted by the pooling clause in said lease.

POINT OF ERROR NO. 4

This Court erred in affirming the judgment of the Trial Court in holding that the Stipulation made that the Dec-

laration of Unit for the Atlantic-Melton 160 acre Unit pooled 80 acres from the Melton Lease and 80 acres from the Hilton Lease and that the remaining 2.713 acres of the Hilton Tract has been pooled as a part of the Cities Service Oil Company 160 acre Unit involved a question of law that the parties could not agree to so as to operate under the Hilton-Atlantic lease as an estoppel against Appellees thereafter asserting Appellant exceeded the extent of the authority granted by the pooling clause in said lease.

POINT OF ERROR NO. 5

The Court erred in affirming the judgment of the Trial Court since the Atlantic-Melton 160 acre Unit Declaration recited the Hilton-Atlantic lease granted the right and power to pool same "to form units of the size permitted or prescribed by the Railroad Commission" and since the parties Stipulated that said Unit Declaration was filed whereby a 160 acre unit was formed consisting of 80 acres from said Hilton-Atlantic lease and 80 acres from the J. W. Melton lease, this Court erred for the reason that the foregoing constituted the Stipulation of the parties that the Hilton-Atlantic lease authorized Appellant to pool "to form units of the size permitted or prescribed by the Railroad Commission" and thereby Appellees were estopped from asserting Appellant exceeded the extent of the authority granted by the pooling clause in said lease.

POINT OF ERROR NO. 6

The Court erred in affirming the judgment of the Trial Court and in holding that the Stipulations made, subject to Appellees' claim the lease description was insufficient, that the Atlantic-Melton 160 acre Unit was formed pooling 80 acres from the Hilton-Atlantic lease and 80 acres from the Melton lease and stipulating the remaining 2.713 acres of the Hilton tract was pooled as a part of the Cities Service Oil Company 160 acre Unit were stipulations as to the construction and legal effect of the Hilton-Atlantic lease and as such were not binding on the Court or the parties, and in

this the Court erred for the reason that said stipulations were not stipulations as to what the law was but were stipulations resolving the private property rights of the parties, and the effect of this Court's holding was that if a question of law is involved the parties could not stipulate and settle their private property rights between themselves by agreeing that the land was pooled and thereby make it unnecessary for the Court to determine what was or was not the law as to whether the land was validly pooled under the terms of said lease.

POINT OF ERROR NO. 7

This Court erred in affirming the judgment of the Trial Court and in holding where, subject to their claim the lease description was insufficient, Appellees made the Stipulation that the Hilton-Atlantic lease was pooled, that same did not operate under the Hilton-Atlantic lease as a ratification of the Atlantic-Melton 160 acre Unit subject to Appellees' claim as to the insufficiency of the lease description and estop Appellees from thereafter asserting Appellant exceeded the extent of the authority granted by the pooling clause in the Hilton-Atlantic lease.

POINT OF ERROR NO. 8

This Court erred in affirming the judgment of the Trial Court and in holding where Appellees in Federal Court, subject to their claim the lease description was insufficient, made the Stipulation that the Hilton-Atlantic lease was pooled and asserted to the Court it was pooled and procured a reversal and remand to the State Court on the ground the royalty owners in the Hilton and Melton Tracts were indispensible parties defendant whose interests would be injuriously affected if the lease were removed from the Unit, that Appellees were not estopped from thereafter asserting in State Court that said lease was not pooled because Appellant exceeded the extent of the authority granted by the pooling clause in said lease.

POINT OF ERROR NO. 9

This Court erred in affirming the judgment of the Trial Court and in holding that the Stipulations made that the land was pooled, subject to Appellees' claim the lease description was insufficient, and that the only contested issues in the case related to whether the Hilton-Atlantic lease was invalid for lack of sufficient description of the land did not operate as an agreement by Appellees that they did not have any other claim and did not make any other claim against Appellant as to the invalidity of said lease and that said Stipulations did not estop Appellees from thereafter asserting Appellant exceeded the extent of the authority granted by the pooling clause in said lease.

POINT OF ERROR NO. 10

This Court erred in affirming the judgment of the Trial Court and in holding where Appellees made the Stipulations that the Hilton-Atlantic lease was pooled and that the only contested issues in the case related to the insufficiency of the lease description, that same did not operate under said lease as a waiver of any rights on the part of Appellees to thereafter assert Appellant exceeded the extent of the authority granted by the pooling clause in the Hilton-Atlantic lease.

POINT OF ERROR NO. 11

This Court erred in affirming the judgment of the Trial Court and in holding, where Appellees had stipulated in Federal Court, subject to their claim the lease description was insufficient, that the Hilton-Atlantic lease had been pooled, that since Appellees had also stipulated the only basis of their recovery was the insufficiency of the lease description, that there were no contested fact issues involved and the issue before the Federal Court as to insufficiency of the lease description involving only a question of law that the Stipulation made at the same time that said lease had been pooled was not binding on the parties so as to estop Appellees from thereafter asserting Appellant had exceeded the extent of the authority granted by the pooling clause in said lease.

POINT OF ERROR NO. 12

This Court erred in affirming the judgment of the Trial Court and in holding that the Stipulations approved by the Federal Court agreeing that the Unit Declarations pooled the Hilton-Atlantic lease and agreeing that the only contested issues related to the insufficiency of the lease description were Stipulations as to what the law was and not binding on the parties or the Court, and in this the Court erred for the reasons said Stipulations were not Stipulations as to what the law was, but were Stipulations relating to the private property rights of the parties whereby it was agreed the acts of making and filing the Unit Declarations did pool said lease and that no other controversy existed between the parties in regard to same.

POINT OF ERROR NO. 13

This Court erred in affirming the judgment of the Trial Court and in holding where Appellees had stipulated the Hilton-Atlantic lease was pooled and in Federal Court had procured a reversal and remand of the case on the ground said lease was pooled, that since there was no claim the lease was ambiguous, the Stipulations that said lease was pooled involved only a question of law and that Appellees were not barred or foreclosed from thereafter in State Court amending their pleadings and asserting said lease was not pooled and had terminated under the long thereafter decided Jones v. Killingsworth case in that Appellant had exceeded the extent of the authority granted by the pooling clause in said lease.

POINT OF ERROR NO. 14

This Court erred in affirming the judgment of the Trial Court and in refusing to render judgment in favor of Appellant on the basis of its Motion for Summary Judgment because, by virtue of the Stipulations in the Pre-Trial Order in Federal Court and particularly those in Paragraph V (5) agreeing the only contested issues related to the insufficiency of the lease description, the parties as a matter of law con-

tracted and agreed that the Hilton-Atlantic lease was properly pooled into 160 acre Units.

POINT OF ERROR NO. 15

This Court erred in affirming the judgment of the Trial Court and in refusing to render judgment in favor of Appellant on the basis of its Motion for Summary Judgment because, by virtue of the Stipulations in the Pre-Trial Order in Federal Court and particularly those in Paragraphs V (5) and VI, as a matter of law Appellant was entitled to judgment granting its Motion for Summary Judgment.

(Points of Error Nos. 16-39 are omitted)

POINT OF ERROR NO. 40

This Court erred in affirming the judgment of the Trial Court and in refusing to remand the case for the reason that in the alternative Appellant asserted that under the Judgment of the Federal Court of Appeals remanding the case to make indispensible parties defendant, and which judgment required Appellees to make indispensible parties of the royalty owners who Appellees asserted in their Motion to Remand were indispensible parties, and in which judgment, said royalty owners were held to be indispensible parties defendant because if the Hilton-Atlantic lease were removed from the unit said lease would terminate thereby terminating the rights of said royalty owners under said lease, and the Court erred for the reason that under said Judgment Appellees were required to make said royalty owners defendants as real and indispensible parties at interest and this Appellees failed to do since they made said royalty owners only nominal parties defendant as to whose title Appellees alleged that "the title to which royalty interests is not an issue in this action", and as to which royalty interests Appellees in their prayer stated were excepted from any recovery by Appellees for title and possession, thus making said royalty owner parties defendant as parties whose presence in the lawsuit was not indispensible to a valid judgment.

This Appellant respectfully prays that this Motion be granted, and that the judgment herein previously rendered on January 30, 1969, be set aside, and that the judgment of the Trial Court be reversed and that Judgment be rendered in favor of Appellant, or else that this case be remanded to the State Court for further action.

(Paragraph omitted)

Respectfully submitted,

RAMEY, BRELSFORD, FLOCK,
DEVEREUX & HUTCHINS,
TOM B. RAMEY, JR.,
FRANK L. MCCLENDON,

By /s/ FRANK L. MCCLENDON

Citizens First National
Bank Bldg.,
P. O. Box 629,
Tyler, Texas 75701,
Attorneys for Appellant,
Atlantic Richfield Company.

APPENDIX Z-1

Motion For Rehearing Of Appellants John W. Melton, Et Al Filed In The Court Of Civil Appeals, 12th Supreme Judicial District Of Texas.

(Original Sent Up As Part Of Record From State Court of Civil Appeals)

(Number and title omitted) (Filed Feb. 12, 1969)

TO THE HONORABLE COURT OF CIVIL APPEALS:

Now come Appellants, John W. Melton and wife, Virgie Melton, C. L. Hanna, Frances Walker McCain, Edson Petroleum Company, Southeastern Public Service Company, Domino Corporation, William G. Webb, Trustee for Empire Trust Company, Empire Trust Company, E. Fred Herschbach, Frederick J. Herschbach, and Robert A. Herschbach, and respectfully move the Court to set aside the Judgment of this Court rendered on January 30, 1969 affirming the Trial Court's Judgment in granting Appellees' Motion for Summary Judgment and in refusing to reverse and render judgment in favor of these Appellants that these Appellants' Motion for Summary Judgment be granted, and refusing in the alternative to reverse and remand this case to the Trial Court, and these Appellants move this Court to grant them a rehearing and upon rehearing to reverse and render judgment in favor of these Appellants or else remand this case to the Trial Court, and in this connection these Appellants assert that this Court erred in overruling each of Appellants' Points of Error as below set forth, and that this Court erred

in each of the holdings of this Court as set forth below, and respectfully shows the Court as follows:

(Note: The Points of Error made in behalf of these parties are the same as Points of Error Nos. 1-15 and No. 40 made in the Motion for Rehearing filed in behalf of Atlantic Richfield Company and shown in this appendix. For brevity and convenience of the Court, said Points of Error are referred to and not here repeated.)

Respectfully submitted,

RAMEY, BRELSFORD, FLOCK,
DEVEREUX & HUTCHINS,
TOM B. RAMEY, JR.,
FRANK L. MCCLENDON,

By /s/ FRANK L. MCCLENDON

Citizens First National
Bank Bldg.,
P. O. Box 629,
Tyler, Texas 75701,
Attorneys for Appellants.

APPENDIX Z-2

Points Of Error Nos. 1, 2, 3, 4 and 13 In Application For Writ Of Error Filed In Supreme Court Of Texas By Petitioners Atlantic Richfield Company, Et Al.

(Certified copy of Application for Writ of Error sent up as part of record from state Court of Civil Appeals and Supreme Court of Texas.)

(Number and title omitted) (Filed Mar. 19, 1969)

TO THE HONORABLE SUPREME COURT OF TEXAS:

Come now Petitioner Atlantic Richfield Company, previously known as The Atlantic Refining Company, hereinafter called Atlantic, and Petitioners John W. Melton and wife, Virgie Melton, C. L. Hanna, Frances Walker McCain, Edson Petroleum Company, Southeastern Public Service Company, Domino Corporation, William G. Webb, Trustee for Empire Trust Company, Empire Trust Company, E. Fred Herschbach, Frederick J. Herschbach, and Robert A. Herschbach, who were Defendants in the Trial Court and Appellants in the Court of Civil Appeals for the Twelfth Supreme Judicial District of Texas at Tyler in Cause No. 402, Atlantic Richfield Company et al, *Appellants v. W. O. Hilton and wife,* Malvirin Hilton and L. A. McCoy and wife, Ila Mae McCoy, and Willis D. Moore, Appellees in said cause and who are Respondents herein, and Petitioners petition this Court to issue Writ of Error to the Court of Civil Appeals for the Twelfth Supreme Judicial District of Texas to the end that the record in the Cause and the Judgment of the Court of Civil Appeals may be brought before

this Court for review and correction of errors of said Court. In support of this Application, Petitioners respectfully show the Court as follows:

(Note: Only Petitioners' Points of Error above referred to are shown since the remainder of the Brief is not considered to be here necessary.)

PETITIONERS' POINTS OF ERROR

Point of Error No. 1

The Court of Civil Appeals erred in holding that the pretrial Stipulations previously entered when this case was in Federal Court were Stipulations "with respect to the construction and legal effect" of an unambiguous contract which was "not binding on either the Court or the parties." Quite to the contrary, the Stipulations here involved only private property rights and the parties' own interpretation of their personal contract about which said parties were free to stipulate, contract and agree as they might choose. (Germane to Points of Error Nos. 2, 4, 6, 11, 12 and 13 in Motions for Rehearing.)

Point of Error No. 2

The Court of Civil Appeals erred in affirming the Judgment of the Trial Court and in refusing to render Judgment for Petitioners on the basis of their Motions for Summary Judgment because by virtue of the Stipulations between the parties made and filed in this cause while pending in Federal Court, the parties contracted and agreed that the Hilton Tract was properly pooled under the provisions of the Hilton-Atlantic Lease, thereby estopping Respondents from thereafter contending to the contrary. (Germane to Points of Error Nos. 1, 3, 5, 9, 14 and 15 in Motions for Rehearing).

Point of Error No. 3

The Court of Civil Appeals erred in affirming the Judgment of the Trial Court and in refusing to render Judgment

for the Petitioners on the basis of their Motions for Summary Judgment because the Stipulations in Federal Court in regard to the Unit Declarations operated under the Hilton-Atlantic lease as a ratification of such Unit Declarations. (Germane to Points of Error No. 7 in Motions for Rehearing).

Point of Error No. 4

The Court of Civil Appeals erred in affirming the Judgment of the Trial Court and in refusing to render Judgment for the Petitioners on the basis of their Motions for Summary Judgment because Respondents estopped themselves from asserting that Atlantic had exceeded its pooling authority under the Hilton-Atlantic Lease when, in Federal Court, they stipulated that said lease "was pooled" and procured a reversal of an adverse judgment against them upon the theory that the Royalty Owners under the pooled tracts were indispensable parties to the litigation. (Germane to Points of Error No. 8 in Motions for Rehearing).

Point of Error No. 13

The Court of Civil Appeals erred in affirming the Judgment of the Trial Court and in refusing to remand the case and require Respondents to make real and indispensable parties defendant of the Royalty Owners instead of nominal parties as to whose title Respondents alleged was "not an issue in this action" and against whom no recovery was sought. (Germane to Points of Error Nos. 40 in Motions for Rehearing).

WHEREFORE, PREMISES CONSIDERED, Petitioners pray that this Application for Writ of Error be granted and, upon final hearing, that the Judgment of the Court of Civil Appeals and the Trial Court be reversed, and that judgment be rendered in favor of Petitioners or, in the alternative, that said Judgments be reversed and this cause be remanded for an-

other trial. Petitioners additionally pray for such other and further relief to which they may be justly entitled at law or in equity.

Respectfully submitted,

RAMEY, BRELSFORD, FLOCK,
DEVEREUX & HUTCHINS,
MIKE A. HATCHELL,
TOM B. RAMEY, JR.,
FRANK L. MCCLENDON,

By /s/ FRANK L. MCCLENDON

Attorneys for Petitioners

Citizens First National
Bank Bldg.,
P. O. Box 629,
Tyler, Texas 75701.

APPENDIX Z-3

Assignments Of Error Nos. I, III and V in Motion For Rehearing Filed In Supreme Court Of Texas By Petitioners Atlantic Richfield Company, Et Al

(Certified Copy from the Supreme Court of Texas sent up as part of record from State Court of Civil Appeals and Supreme Court of Texas.)

(Number and title omitted) (Filed May 22, 1969)

TO THE HONORABLE SUPREME COURT OF TEXAS:

Comes now Petitioner, Atlantic Richfield Company, and Petitioners, John W. Melton and wife, et al, and move the Court to set aside its order rendered and entered May 7, 1969, whereby Petitioners' Application for Writ of Error was refused with the notation "No Reversible Error," and, upon rehearing, to grant said Application and, upon final hearing, to reverse the judgment of the Court of Civil Appeals and the trial court, and to render judgment for Petitioners, or, in the alternative, to remand this cause for trial on the merits.

As grounds for their Motion, Petitioners would respectfully show the Court as follows:

ASSIGNMENTS OF ERROR

I.

The Court has erred in refusing to grant Petitioners' Application for Writ of Error on the basis of Points of Error Nos. 1-5, because, by virtue of the pre-trial stipulations in this cause in Federal Court, Respondents contracted and

agreed that the Hilton Tract was properly pooled with the Melton Tract under the terms of the Hilton-Atlantic Lease and, indeed, even secured a reversal of an adverse judgment against them predicated upon the validity of said pooling provisions and the Unit Declaration thereunder. Since those stipulations were freely entered, were binding, and have never been retracted, Respondents are bound by the same and estopped to deny that the pooling provisions of the Hilton-Atlantic Lease were exceeded by declaration of the Hilton-Melton Unit.

II.

(Omitted.)

III.

The Court has erred in refusing to grant Petitioners' Application for Writ of Error on the basis of Point of Error No. 13, because the lower Courts fundamentally erred in terminating valuable property rights of the Royalty Owners when Respondents affirmatively alleged that said Royalty Owners title "was not in issue in this action" and/or in refusing to remand the case with the requirement that all said Royalty Owners be made real and indispensable parties.

IV.

(Omitted)

V.

The judgment of the trial court, and the Court of Civil Appeals, as well as this Court's refusal to grant Peti-

tioners' Application for Writ of Error has wrongfully deprived Petitioners of their property and their vested property rights without that due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States.

(Remainder of this Motion is omitted)

Respectfully submitted,

RAMEY, BRELSFORD, FLOCK,
DEVEREUX & HUTCHINS,
MIKE A. HATCHELL,
TOM B. RAMEY, JR.,
FRANK L. MCCLENDON

By /s/ MIKE A. HATCHELL

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CERTIFICATE OF SERVICE

This certifies that copies of this Appendix have been served upon counsel of record for Respondents by enclosing copies in sealed envelopes and depositing same in the United States Post Office at Tyler, Texas, with first-class postage prepaid and sent by Certified mail, and addressed to counsel of record at their post office addresses as follows:

Mr. Edward Kliewer, Jr.,
Kliewer and Hood,
2210 Mercantile Bank Bldg.,
Dallas, Texas 75201.

Mr. Willis D. Moore,
Moore and Holland,
P. O. Box 392,
Athens, Texas.

Dated this 15 day of August, 1969.

Jack W. Flock

Jack W. Flock, *one of the Attorneys for Petitioner.*